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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2017–0721]

#### Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the University Bridge across the Lake Washington Ship Canal, mile 4.3, at Seattle, WA. The deviation is necessary to accommodate drawspan inspections. This deviation allows the bridge to operate in single leaf (half span) during inspections.

**DATES:** This deviation is effective from 9 a.m. on August 9, 2017, to 3 p.m. on August 10, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0721 is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Danny McReynolds, Bridge Management Specialist, Thirteenth Coast Guard District; telephone 206–220–7234, email: [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Seattle Department of Transportation, bridge owner, requested a temporary deviation from the operating schedule for the University Bridge across the Lake Washington Ship Canal, mile 4.3, at Seattle, WA, to allow safe inspections of each leaf of the double bascule drawspan. The University Bridge provides a vertical clearance of 30 feet

in the closed-to-navigation position. Vertical clearances are referenced to the Mean Water Level of Lake Washington. While the bridge operates in single leaf (half span) mode, a horizontal clearance of 75 feet is provided. The normal operating schedule for the three subject bridge is in 33 CFR 117.1051. During this deviation period, the University Bridge is authorized to open half the drawspan to marine vessels from 9 a.m. on August 9, 2017, to 3 p.m. on August 9, 2017, and from 9 a.m. on August 10, 2017, to 3 p.m. on August 10, 2017.

Waterway usage on Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Vessels able to pass under the bridge in the closed-to-navigation position may do so at anytime. The subject bridge will only be able to open the drawspan in single leaf for emergencies during this period, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 31, 2017.

**Steven Michael Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2017–16508 Filed 8–4–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2017–0732]

#### Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge, across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. The deviation is necessary to accommodate vehicular traffic attending football games at Husky Stadium at the University of Washington, Seattle, WA. The deviation is necessary to allow the bridge to remain in the closed-to-navigation position two and a half hours before and two and a half hours after each game. The game times for five of the seven games scheduled for Husky Stadium have not yet been determined due to NCAA television scheduling.

**DATES:** This deviation is effective from 2:30 p.m. on September 9, 2017 through 11 p.m. on November 25, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0732 is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email: [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Washington State Department of Transportation (the bridge owner), on behalf of the University of Washington Police Department, has requested that the Montlake Bridge bascule span remain in the closed-to-navigation position, and need not open to vessel traffic to facilitate timely movement of pre-game and post game football traffic at Husky Stadium at the University of Washington, Seattle, WA. The Montlake Bridge crosses the Lake Washington Ship Canal at mile 5.2; and in the closed-to-navigation position provides 30 feet of vertical clearance throughout the navigation channel and 46 feet of vertical clearance throughout the center 60-feet of the bridge. These vertical clearances are made in reference to the Mean Water Level of Lake Washington. The normal operating schedule for Montlake Bridge operates in accordance with 33 CFR 117.1051(e).

The deviation period will cover the following dates:



Time/date start	Time/date end	Action
2:30 a.m. Sep 9, 2017 .....	5 p.m. Sep 9, 2017 .....	span in the closed-to-navigation position.
8:30 p.m. Sep 9, 2017 .....	11 p.m. Sep 9, 2017 .....	span in the closed-to-navigation position.
4 p.m. Sep 16, 2017 .....	6:30 p.m. Sep 16, 2017 .....	span in the closed-to-navigation position.
9:30 p.m. Sep 16, 2017 .....	11:59 p.m. Sep 16, 2017 .....	span in the closed-to-navigation position.
TBA Oct 7, 2017 .....	TBA Oct 7, 2017 .....	span in the closed-to-navigation position.
TBA Oct 28, 2017 .....	TBA Oct 28, 2017 .....	span in the closed-to-navigation position.
TBA Nov 4, 2017 .....	TBA Nov 4, 2017 .....	span in the closed-to-navigation position.
TBA Nov 18, 2017 .....	TBA Nov 18, 2017 .....	span in the closed-to-navigation position.
TBA Nov 25, 2017 .....	TBA Nov 25, 2017 .....	span in the closed-to-navigation position.

The times for the closures on the dates with TBA (Time to Be Announced) will be determined, and announced in the Coast Guard's Local Notice to Mariners and Broadcast Notice to Mariners as they become available. Due to NCAA television scheduling, the times for the games are not currently available. The bridge shall operate in accordance to 33 CFR 117.1051(e) at all other times. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass.

In accordance with 33 CFR 117.35(e), the drawbridges must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 31, 2017.

**Steven Michael Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2017-16502 Filed 8-4-17; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2017-0679]

#### Safety Zone; North Atlantic Ocean, Ocean City, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the North Atlantic Ocean, Ocean City, NJ, safety zone from 9:00 p.m. through 11:59 p.m. on October 10, 2017. This action is necessary to ensure safety of life on the navigable waters of the

United States immediately prior to, during, and immediately after a fireworks display event. During the enforcement period, and in accordance with the safety zone, no vessel or person may enter, transit through, anchor in, or remain within the regulated area unless authorized by the Captain of the Port Delaware Bay or a designated representative.

**DATES:** The regulations in 33 CFR 165.506 will be enforced from 9:00 p.m. to 11:59 p.m. on October 10, 2017, for the safety zone listed as (a.)11 in the Table to § 165.506.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, you may call or email MST2 Amanda Boone, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215-271-4889, email *Amanda.N.Boone@USCG.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone at 33 CFR 165.506, Table to § 165.506, (a.)11 for the regulated area located on the North Atlantic Ocean near Ocean City, NJ, from 9:00 p.m. to 11:59 p.m. on October 10, 2017. This action is necessary to ensure safety of life on U.S. navigable waterways during a fireworks display.

Coast Guard regulations for recurring fireworks displays within Captain of the Port Delaware Bay Zone appear in § 165.506, Safety Zones; Fireworks Displays in the Fifth Coast Guard District, which specifies the location for this regulated area as all waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16'22" N., longitude 074°33'54" W., in the vicinity of the shoreline at Ocean City, NJ.

As specified in § 165.506, during the enforcement period, no vessel or person may enter, transit through, anchor in, or remain within the regulated area unless authorized by the Captain of the Port Delaware Bay or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP,

designated representative or Patrol Commander.

This notice of enforcement is issued under authority of 33 CFR 165.506 and 33 U.S.C. 1233. The Coast Guard will provide the maritime community with advanced notice of enforcement of regulation by Broadcast Notice to Mariners (BNM), Local Notice to Mariners and on-scene notice by a designated representative.

In the event the Captain of the Port, Delaware Bay determines that it's not necessary to enforce the regulated area for the entire duration of the enforcement period, a BNM will be issued to authorize general permission to enter the regulated area.

Dated: August 1, 2017.

**Scott E. Anderson,**

*Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.*

[FR Doc. 2017-16506 Filed 8-4-17; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2014-0292; FRL-9965-63-OAR]

#### Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking action to correct an omission in revisions requested to Performance Specification 2 in the "revisions" rule published August 30, 2016.

**DATES:** *Effective:* August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143-02), Environmental Protection Agency, Research Triangle Park, NC 27711;

telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: [melton.lula@epa.gov](mailto:melton.lula@epa.gov).

**SUPPLEMENTARY INFORMATION:** This action removes subparagraphs 6.1.1.1, 6.1.1.2, 6.1.1.3, and 6.1.1.4 in Performance Specification 2. These four subparagraphs are no longer necessary due to revisions that were made to paragraph 6.1.1 in the final “revisions” rule dated August 30, 2016 (81 FR 59800).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this technical amendment final without prior proposal and opportunity for public amendment because only simple publication errors are being corrected that do not substantially change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. (See *also* the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 307(d)(1), indicating that the good cause provisions in subsection 553(b) of the APA continue to apply to this type of rulemaking under section 307(d) of the CAA.)

#### List of Subjects in 40 CFR Part 60

Environmental protection,  
Administrative practice and procedure,  
Air pollution control.

Dated: July 25, 2017.

**Sarah Dunham,**

*Acting Assistant Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency corrects title 40, chapter I of the Code of Federal Regulations as follows:

#### PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

- 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Appendix B to Part 60 [Corrected]

- 2. In appendix B to part 60, in “Performance Specification 2—Specifications and Test Procedures for SO<sub>2</sub> and NO<sub>x</sub> Continuous Emission Monitoring Systems in Stationary Sources” remove sections 6.1.1.1, 6.1.1.2, 6.1.1.3, and 6.1.1.4.

[FR Doc. 2017–16493 Filed 8–4–17; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XF577

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason General category retention limit adjustment.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from four large medium or giant BFT per vessel per day/trip to two large medium or giant BFT per vessel per day/trip for the remainder of the 2017 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

**DATES:** Effective August 5, 2017, through December 31, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin or Brad McHale, 978–281–9260.

#### SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Atlantic Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. NMFS is required under

ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a “subquota” or portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. On December 19, 2016, NMFS published an inseason action transferring 16.3 mt of BFT quota from the December 2017 subquota to the January 2017 subquota period (81 FR 91873). For 2017, NMFS also transferred 40 mt from the Reserve to the General category effective March 2, resulting in an adjusted General category quota of 506.7 mt (82 FR 12747, March 7, 2017).

#### Adjustment of General Category Daily Retention Limit

The default General category retention limit is one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)).

Thus far this year, NMFS adjusted the daily retention limit for the 2017 January subquota period from the default level of one large medium or giant BFT to three large medium (81 FR 91873, December 19, 2016). NMFS closed the January 2017 fishery on March 29 (82 FR 16136, April 3, 2017). NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to four large medium or giant BFT for the June through August 2017 subquota period (82 FR 22616, May 17, 2017).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). NMFS has considered the relevant regulatory determination criteria and their applicability to the General category BFT retention limit for

the remainder of the June through August 2017 subquota time period. In addition, because NMFS normally prepares a **Federal Register** notice to adjust the daily retention limit for the remainder of the year in early August, NMFS simultaneously is taking action to adjust the retention limit for the September, October through November, and December subquota time periods from the default level that would otherwise take effect September 1, 2017. These considerations include, but are not limited to, the following:

NMFS considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Commercial-size BFT are currently readily available to vessels fishing under the General category quota. As of July 31, 2017, the General category has landed approximately 268.3 mt, which is 57 and 53 percent of the annual base and adjusted 2017 General category quotas, respectively. Landings since June 1, 2017, are 160.6 mt, representing 69 percent of the General category subquota for the June 1 through August 31 period. If current catch rates continue with the four-fish daily limit, the available subquota for June 1 through August 31 period could be reached or exceeded, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower limit.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Prolonged opportunities to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). The adjusted retention limit would be consistent with the quotas established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to

affect the stock in ways not already analyzed in those documents. It is also important that NMFS limit landings to the subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding.

Another relevant criterion is the effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota (§ 635.27(a)(8)(viii)). NMFS anticipates that some underharvest of the 2016 adjusted U.S. BFT quota will be carried forward to 2017 to the Reserve category, in accordance with the regulations, later this summer when complete BFT catch information for 2016 is available and finalized. This increases the likelihood that General category quota will remain available through the end of 2017, provided retention limits are managed accordingly. Last fall, General category landings were relatively high due to a combination of fish availability, favorable fishing conditions, and higher daily retention limits (five fish per day for June 1 through October 8, four fish effective October 9 through October 16, and two fish effective October 17 through November 3). Given these conditions, NMFS transferred 125 mt from the Reserve category (81 FR 70369, October 12, 2016) and later transferred another 85 mt (18 mt from the Harpoon category and 67 mt from the Reserve category) (81 FR 71639, October 18, 2016). Nevertheless, NMFS had to close the 2016 General category fishery effective November 4 to prevent further overharvest of the adjusted General category quota. For 2017, NMFS again intends to provide General category participants in all areas and time periods opportunities to harvest the General category quota without exceeding it, through active inseason management such as retention limit adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), while extending the season as long as practicable.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full General category quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT

quota allocations (related to § 635.27(a)(8)(x)).

Based on these considerations, NMFS has determined that a two-fish General category retention limit is warranted for the remainder of the year. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its available quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from four to two large medium or giant BFT per vessel per day/trip, effective August 5, 2017, through December 31, 2017. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply through the end of the year), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

#### *Monitoring and Reporting*

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing [hmspermits.noaa.gov](https://hmspermits.noaa.gov) or by using the HMS Catch Reporting App. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access [hmspermits.noaa.gov](https://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

**Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice and an opportunity for public comment is impracticable because the regulations implementing the 2006 Consolidated HMS FMP, as amended, intended that inseason retention limit adjustments would allow the agency to respond quickly to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, adjustment to the General category BFT daily retention limit from the default level is warranted.

Delays in adjusting the retention limit may result in the available June 1 through August 31 subquota being reached or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under the

lower limit being set for this period. Such delays could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for the duration of the subquota period. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period.

Prior notice and an opportunity for public comment is also impracticable for the retention limit adjustment to two-fish for the September-December subquota periods. By adopting the two-fish limit for the remainder of the year through this action, NMFS avoids confusion that would arise for the regulated community from two inseason actions adopting the same limit.

Delaying implementation of the two-fish retention limit for the September-December subquota periods could also result in temporary reversion to a one-fish limit under the default regulatory provisions, which would further confuse the regulated community. Avoiding delay in implementation will also allow fishermen to take advantage of the availability of fish on the fishing grounds and of quota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 2, 2017.

**Alan D. Risenhoover,**  
*Director, Office of Sustainable Fisheries,*  
*National Marine Fisheries Service.*

[FR Doc. 2017-16583 Filed 8-2-17; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 82, No. 150

Monday, August 7, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 44

[Docket ID OCC–2017–0014]

#### Proprietary Trading and Certain Interests in and Relationships With Covered Funds (Volcker Rule); Request for Public Input

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Request for information.

**SUMMARY:** The OCC is seeking the public's input with this request for information to assist in determining how the final rule implementing section 13 of the Bank Holding Company Act (commonly referred to as the "Volcker Rule") should be revised to better accomplish the purposes of the statute. The OCC also solicits comments suggesting improvements in the ways in which the final rule has been applied and administered to date. This OCC request is limited to regulatory actions that may be undertaken to achieve these objectives. The OCC is not requesting comment on changes to the underlying Volcker statute. The OCC recognizes that any revision to the final rule or the administration of that rule must be done consistent with the constraints of the statute and requests that commenters provide input that fits within the contours of that structure.

**DATES:** Comments should be submitted by September 21, 2017.

**ADDRESSES:** You may submit comments to the OCC by any of the methods set forth below. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title "Volcker Rule; Request for Information" to facilitate the organization and distribution of the comments. You may

submit comments by any of the following methods:

- **Federal eRulemaking Portal—“Regulations.gov”:** Go to [www.regulations.gov](http://www.regulations.gov). Enter “Docket ID OCC–2017–0014” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.
- Click on the “Help” tab on the [Regulations.gov](http://Regulations.gov) home page to get information on using [Regulations.gov](http://Regulations.gov), including instructions for submitting public comments.

- **Email:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW., Suite 3E–218, Washington, DC 20219.

- **Fax:** (571) 465–4326.

**Instructions:** You must include “OCC” as the agency name and “Docket ID OCC–2017–0014” in your comment. In general, the OCC will enter all comments received into the docket and publish them on the [Regulations.gov](http://Regulations.gov) Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this request for information by any of the following methods:

- **Viewing Comments Electronically:** Go to [www.regulations.gov](http://www.regulations.gov). Enter “Docket ID OCC–2017–0014” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.

- Click on the “Help” tab on the [Regulations.gov](http://Regulations.gov) home page to get information on using [Regulations.gov](http://Regulations.gov). The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** Ted Dowd, Director; Suzette Greco, Assistant Director; Tabitha Edgens, Senior Attorney; Mark O'Horo, Attorney, Securities and Corporate Practices Division, (202) 649–5510; Patrick Tierney, Assistant Director, Legislative and Regulatory Activities Division, (202) 649–5490, 400 7th Street SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

The OCC gives notice that it is seeking the public's input to assist in determining how the final rule implementing section 13 of the Bank Holding Company Act<sup>1</sup> (the “final rule”) should be revised to better accomplish the purposes of the statute. The OCC also solicits comments suggesting improvements in the ways the final rule has been applied and administered to date. The request for information published here also is available on the OCC's Web site.

As this request for information describes, there is broad recognition that the final rule should be improved both in design and in application. A report recently issued by the Department of the Treasury<sup>2</sup> (“Treasury Report”) identifies problems with the design of the final rule—the inclusion of a “purpose” test for defining proprietary trading, for example. The report also contains recommendations for revisions to the final rule. The OCC's objective in issuing this request for information is to gather additional, more specific information that could provide focused support for any reconsideration of the final rule that the rulewriting agencies

<sup>1</sup> 12 CFR part 44 (OCC); 12 CFR part 248 (Board); 12 CFR part 351 (FDIC); 17 CFR part 75 (CFTC); 17 CFR part 255 (SEC).

<sup>2</sup> U.S. Department of the Treasury Report, A Financial System that Creates Economic Opportunities: Banks and Credit Unions (2017), pp. 71–78, 132–133.

may undertake and contribute to the development of the bases for particular changes that may be proposed.

The information that the OCC is soliciting could support the revisions to the final rule advanced in the Treasury Report and elsewhere; it also may support additional revisions that are consistent with the spirit of the Treasury Report. In any case, the OCC and the other Volcker rulewriting agencies will need to explain the basis for any changes to the current rule that may be proposed. The OCC recognizes that revisions to the current rule must be undertaken jointly by the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation and in consultation and coordination with the Securities and Exchange Commission and the Commodity Futures Trading Commission. The OCC anticipates that the information solicited here—that is, information and data describing with specificity any burdens or inefficiencies resulting from the current rule and explaining how particular revisions would alleviate those burdens or inefficiencies—would be useful to inform the drafting of a proposed rule.

## Seeking Public Input on the Volcker Rule

### I. Background

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) created a new section 13 of the Bank Holding Company Act (“BHC Act”), which generally prohibits “banking entities” (e.g., insured depository institutions, companies that control an insured depository institution, and their affiliates and subsidiaries) from engaging in proprietary trading and from holding an ownership interest in, sponsoring, or having certain relationships with hedge fund and private equity funds.<sup>3</sup> Section 13 of the BHC Act authorized the Office of the Comptroller of the Currency (“OCC”), Board of Governors of the Federal Reserve System (the “Board”), Federal Deposit Insurance Corporation (“FDIC”), Commodity Futures Trading Commission (“CFTC”), and Securities and Exchange Commission (“SEC”) (together, the “Agencies”) to issue implementing regulations.<sup>4</sup> The

Agencies issued final regulations implementing section 13 in December 2013, with an effective date of April 1, 2014.<sup>5</sup> Banking entities were generally required to conform their proprietary trading activities and investments to the requirements of section 13 and the final rule (together, the “Volcker Rule”) by July 21, 2015.<sup>6</sup>

The final rule’s proprietary trading provisions generally prohibit banking entities from engaging, as principal, in short-term trading of certain securities, derivatives, commodity futures and options on these instruments.<sup>7</sup> The final rule’s covered funds provisions generally prohibit banking entities from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund (“covered fund”). The final rule defines the term covered fund to include any issuer that would be an investment company under the Investment Company Act of 1940 if it were not otherwise excluded by sections 3(c)(1) or 3(c)(7) of that Act, as well as certain foreign funds and commodity pools.<sup>8</sup> The proprietary trading prohibition and the covered funds prohibition are subject to a number of exclusions and exemptions. Banking entities of all sizes are subject to the Volcker Rule and are generally required to establish an internal compliance program reasonably designed to ensure and monitor compliance with the Volcker Rule.<sup>9</sup>

The Volcker Rule was intended to promote the safety and soundness of banking entities and prevent taxpayer bailouts by minimizing bank exposure to certain proprietary trading and fund activities that could involve undue risk. At the same time, the Volcker Rule was

provide for consistent application and implementation of the applicable provisions of Section 13. 12 U.S.C. 1851(b)(2)(B)(ii).

<sup>5</sup> 12 CFR part 44 (OCC); 12 CFR part 248 (Board); 12 CFR part 351 (FDIC); 17 CFR part 75 (CFTC); 17 CFR part 255 (SEC).

<sup>6</sup> See Board Order Approving Extension of Conformance Period (Dec. 31, 2014). The Board also granted two additional one-year extensions (until July 21, 2017) for “legacy” covered funds (i.e., covered fund relationships and investments that were in place prior to December 31, 2013). See Board Order Approving Extension of Conformance Period Under Section 13 of the Bank Holding Company Act (Dec. 18, 2014); Board Order Approving Extension of Conformance Period Under Section 13 of the Bank Holding Company Act (July 6, 2016). In 2017, the Board approved banking entity applications for additional transition periods of up to five years for specified legacy “illiquid funds.”

<sup>7</sup> See 12 CFR part 44, subpart B.

<sup>8</sup> See 12 CFR part 44, subpart C.

<sup>9</sup> See 12 CFR part 44, subpart D. See section titled “Compliance Program and Metrics Reporting Requirements” below for additional background on the Volcker Rule compliance program requirements.

designed to permit banking entities to continue providing client-oriented financial services that are critical to capital generation and that facilitate liquid markets.<sup>10</sup> Some have asserted that the Volcker Rule has succeeded in accomplishing these goals in some respects.<sup>11</sup> However, others have identified difficulties in interpreting and applying some of the final rule’s provisions.<sup>12</sup> Many have argued that the final rule is overly complex and vague.<sup>13</sup> Banking entities in particular have suggested that, despite their best efforts, they sometimes are not able to distinguish permissible from prohibited activities.<sup>14</sup> Banking entities also have suggested that the Volcker Rule is overbroad and restricts a number of essential financial functions, potentially restricting activities that could spur economic growth. In particular, firms have suggested that they have been forced to curtail economically useful market-making, hedging, and asset-liability management to avoid violating the proprietary trading prohibition.<sup>15</sup>

<sup>10</sup> See 79 FR 5535, 5541.

<sup>11</sup> See, e.g., Marc Jarsulic, Vice President, Economic Policy, Center for American Progress, Testimony before the House Committee on Financial Services, Subcommittee on Capital Markets, Securities, and Investment, U.S. House of Representatives (Mar. 29, 2017), (arguing the Volcker Rule has caused banks to exit proprietary trading activities but has not caused a significant impact on corporate bond market liquidity).

<sup>12</sup> See, e.g., Daniel K. Tarullo, Governor of the Federal Reserve System, Departing Thoughts at the Woodrow Wilson School, Princeton University (April 4, 2017) (“Departing Thoughts”); William C. Dudley, President and Chief Executive Officer of the Federal Reserve Bank of New York, Remarks at the Princeton Club of New York (April 7, 2017) (“Princeton Club”); *Examining the Impact of the Volcker Rule on the Markets, Businesses, Investors, and Job Creators: Hearing on the Volcker Rule Before the Subcomm. On Capital Markets, Securities, and Investment of the House Comm. On Financial Services*, 115th Cong. (2017); American Bankers Association, *The Volcker Rule: Islands of Permission in a Sea of Prohibition* (2017); Institute of International Bankers, U.S. Supervision and Regulation of International Banks: Recommendations for the Report of the Treasury Secretary (2017); Financial Services Roundtable, *FSR Recommendations for Aligning Financial Regulation With Core Principles* (2017); The Clearing House, Submission to the U.S. Treasury Department: Aligning the U.S. Bank Regulatory Framework with the Core Principles of Financial Regulation (2017).

<sup>13</sup> See, e.g., U.S. Department of the Treasury Report, *A Financial System that Creates Economic Opportunities: Banks and Credit Unions* (2017) (“The rule has spawned an extraordinarily complex and burdensome compliance regime due to a combination of factors . . .”); Tarullo, *Departing Thoughts*; American Bankers Association.

<sup>14</sup> See, e.g., American Bankers Association (“ . . . in many cases, a bank may not know whether it is engaged in impermissible activities until it is notified in the course of a bank examination.”).

<sup>15</sup> See, e.g., American Bankers Association (“The goal should be to provide certainty that the rules will not impede banks from engaging in bona fide

Continued

<sup>3</sup> See 12 U.S.C. 1851.

<sup>4</sup> The federal banking agencies (i.e., the OCC, the Board, and the FDIC) must act jointly to issue final regulations with respect to insured depository institutions. 12 U.S.C. 1851(b)(2)(B)(i)(I). The five Agencies, in developing and issuing final rules, must consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such rules are comparable and

The covered funds prohibition has also been criticized for capturing investment vehicles that facilitate lending activity and capital formation, even though they may not be equivalent to traditional private equity funds or hedge funds.<sup>16</sup>

The OCC is seeking the public's input on whether aspects of the final rule and its implementation should be revised to better accomplish the purposes of section 13 of the BHC Act while decreasing the compliance burden on banking entities and fostering economic growth. In particular, the OCC is inviting input on ways to tailor further the rule's requirements and clarify key provisions that define prohibited and permissible activities. The OCC is also inviting input on how the existing rule could be implemented more effectively without revising the regulation. The OCC encourages the public to submit data addressing the effectiveness of the rule and its implementation, the current compliance burden, and any need for additional guidance and/or proposed revisions to the rule.

The OCC recognizes that any revisions to the final rule would need to be undertaken together with the other Agencies. Revisions would require the Agencies to articulate a reasoned basis for the changes, so it is especially important for those commenting to provide evidence demonstrating the nature and scope of the problems they identify and the likely efficacy of any solutions they propose. The OCC believes the information gathered in response to this request for information would be helpful in that regard.

This request for information identifies four broad areas for the public's consideration: (1) The scope of entities to which the final rule applies; (2) the proprietary trading restrictions; (3) the covered fund restrictions; and (4) the

market-making, asset liability management, hedging, and other trading activities. . . ."); Financial Services Roundtable ("For example, the bank issues public debt for funding purposes and then swaps the payments to fixed for floating through a plain-vanilla interest-rate swap in order to meet its asset-liability management objectives. Again, this is not an activity, that we believe the architects of the Volcker Rule envisioned including within the Rule's restrictions, but resident examiners and their legal departments have interpreted it as such.").

<sup>16</sup> See, e.g., Institute of International Bankers ("The Agencies' approach has therefore resulted in an overly broad definition of covered fund that goes well beyond the original intent to capture private equity funds and hedge funds, and the list of enumerated exclusions fails to exclude many vehicles that are not equivalent to traditional private equity funds or hedge funds."); Financial Services Roundtable ("This approach, however, remains overly broad. For example, it captures funds that invest solely in funds that are otherwise excluded funds, some plain-vanilla securitizations, and re-REMICs.").

compliance program and metrics reporting requirements. However, the OCC is inviting comments on all aspects of the final rule and its administration. The request for information is limited to regulatory actions that may be undertaken to better accomplish the purpose of the statute and improve the way the final rule has been applied and administered to date. The OCC is not requesting comment on changes to the underlying Volcker statute. Regulatory actions that may be undertaken to achieve these objectives will be subject to the constraints of the statute. For instance, activity the Agencies may permit under the market-making or risk mitigating hedging exceptions to the general proprietary trading prohibition are subject to statutory safety and soundness and financial stability backstops, as well as other conditions.

## II. Topics and Questions

The OCC is particularly interested in receiving comments and supporting data on the following topics and questions:<sup>17</sup>

### *Scope of Entities Subject to the Rule*

The Volcker Rule's statutory prohibition applies to any "banking entity,"<sup>18</sup> a term that is defined to include any insured depository institution, any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of such entity.<sup>19</sup> The Agencies adopted this definition in the final rule and provided a limited number of specific exclusions.<sup>20</sup>

As a result of this definition, the Volcker Rule prohibitions and compliance program requirements apply to many entities that may not pose systemic risk concerns, such as small community banks engaged primarily in traditional banking activities and other banks that do not engage in the type of activities, or in activities that present the type of risk, that the Volcker Rule

was designed to restrict. For example, banks with minimal or no proprietary trading activities are subject to the final rule. Many of these institutions have reported experiencing a significant regulatory burden. The final rule's tailored compliance program requirements were intended to reduce the Volcker Rule's economic impact on small banking entities,<sup>21</sup> but even determining whether an entity is eligible for the simplified program can pose a significant burden for small banks.<sup>22</sup> In addition, certain activities of small banks have been caught up in the proprietary trading prohibition. Exempting small banking entities and other banking entities without substantial trading activities would enable them to reduce their compliance costs and devote more resources to local lending without materially increasing risk to the financial system.<sup>23</sup>

The banking entity definition also extends to foreign subsidiaries of foreign

<sup>21</sup> The OCC, Board, and FDIC statement on the Volcker Rule's applicability to community banks, released concurrently with the final rule, recognized that "the vast majority of these community banks have little or no involvement in prohibited proprietary trading or investment activities in covered funds. Accordingly, community banks do not have any compliance obligations under the final rule if they do not engage in any covered activities other than trading in certain government, agency, State or municipal obligations." Board, FDIC, and OCC, *The Volcker Rule: Community Bank Applicability* (Dec. 10, 2013).

<sup>22</sup> Toney Bland, Senior Deputy Comptroller for Midsize and Community Bank Supervision, OCC, Testimony before the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit (Apr. 23, 2015), ("[C]ommunity banks need to ascertain whether their activities are covered by the Volcker Rule in order to understand whether they have any compliance obligations. Making this determination may require them to expend money and resources—for example, by hiring attorneys and consultants. This regulatory burden is not justified by the risk these institutions present."). See also, Tarullo, *Departing Thoughts*.

<sup>23</sup> Acting Comptroller of the Currency Keith Noreika, Testimony before the Senate Banking Committee (Jun. 22, 2017) ("Applying the Rule to community banks engaged primarily in traditional banking activities or to institutions that are not materially engaged in risky trading activities does not further the statutory purpose. Exempting community banks and providing an off-ramp for larger institutions depending on the nature and scope of their trading activities would reduce complexity, cost, and burden associated with the Volcker Rule by providing a tailored approach to addressing the risks the Rule was designed to contain."). See also, Dudley, *Princeton Club* ("For smaller institutions, the regulatory and compliance burdens can be considerably lighter because the failure of such a firm will not impose large costs or stress on the broader financial system. Also, we must recognize that smaller firms have less ability to spread added compliance costs across their business. All else equal, an increase in compliance burden can create an unintended competitive advantage for larger institutions. We should also recognize the important role that smaller banking institutions have in supporting local communities around the country.").

<sup>17</sup> For purposes of this information request, "data" includes both quantitative and qualitative information, as well as other verifiable evidence supporting respondents' comments and suggestions.

<sup>18</sup> 12 U.S.C. 1851(a)(1).

<sup>19</sup> 12 U.S.C. 1851(h)(1).

<sup>20</sup> The final rule excludes from the definition of "banking entity" (i) a covered fund that does not itself meet the definition of banking entity, (ii) a portfolio company held under the authority of section 4(k)(4)(H) or (I) of the BHC Act or any portfolio concern defined under 13 CFR 107.50 that is controlled by a small business investment company, and (iii) the FDIC acting in its corporate capacity or as a conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Act. 12 CFR 44.2(c).



banking organizations acting outside of the United States. In particular, foreign banking organizations have raised questions regarding non-U.S. entities that are not covered funds under section 10(b)(iii) of the final rule (“foreign excluded funds”) and whether such funds may become banking entities if they are “controlled” by a banking entity.<sup>24</sup> Foreign banking entities that sponsor foreign non-covered funds in some foreign jurisdictions may, by virtue of typical corporate governance structures for funds in these jurisdictions, be deemed to “control” a foreign non-covered fund for purposes of the BHC Act.<sup>25</sup> These corporate governance structures have raised questions regarding whether foreign non-covered funds that are sponsored by foreign banking entities and offered solely outside the U.S. and in accordance with foreign laws are banking entities under the final rule. The OCC, Board, and FDIC, in consultation with the SEC and CFTC, issued a statement of policy on July 21, 2017, announcing that the three Federal banking agencies are coordinating review of the treatment of these funds under the final rule and providing that they would not propose to take action with respect to such foreign funds during the one-year period prior to July 21, 2018, if they meet the criteria specified in the statement of policy.

#### *Questions on Scope of Entities Subject to the Rule*

1. What evidence is there that the scope of the final rule is too broad?

2. How could the final rule be revised to appropriately narrow its scope of application and reduce any unnecessary compliance burden? What criteria could be used to determine the types of entities or activities that should be excluded? Please provide supporting data or other appropriate information.

3. How would an exemption for the activities of these banking entities be consistent with the purposes of the Volcker Rule and not compromise safety and soundness and financial stability? Please include supporting data or other appropriate information.

<sup>24</sup> See Board, FDIC, and OCC, Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017); Board, CFTC, FDIC, OCC, and SEC, Joint Release, Federal Regulatory Agencies Announce Coordination of Reviews for Certain Foreign Funds under “Volcker Rule” (July 21, 2017).

<sup>25</sup> For example, sponsors of foreign funds in some foreign jurisdictions may select the majority of the fund’s directors or trustees, or otherwise control the fund for purposes of the BHC Act by contract or through a controlled corporate director.

4. How could the rule provide a carve-out from the banking entity definition for certain controlled foreign excluded funds? How could the rule be tailored further to focus on activities with a U.S. nexus?

5. Are there other issues related to the scope of the final rule’s application that could be addressed by regulatory action?

#### *Proprietary Trading Prohibition*

The final rule, like the statute, defines proprietary trading as engaging as principal for the trading account of the banking entity in any purchase or sale of one or more financial instruments. Building upon the statutory definition,<sup>26</sup> the final rule adopted a three pronged definition of “trading account.” The first prong includes within the definition any account used by a banking entity to purchase or sell one or more financial instruments principally for the purpose of (a) short-term resale, (b) benefitting from short-term price movements, (c) realizing short-term arbitrage profits or (d) hedging any of the foregoing.<sup>27</sup> Banking entities and commentators have asserted that this prong of the definition imposes a significant compliance burden because it requires determining the intent associated with each trade.

In addition, the final rule provides that the purchase or sale of a financial instrument will be presumed to be for the trading account under the first prong of the trading account definition if the banking entity holds the financial instrument for fewer than 60 days or substantially transfers the risk of the position within 60 days.<sup>28</sup> If a banking entity sells or transfers the risk of a position within 60 days, it must be able to demonstrate that it did not purchase or sell the instrument for short-term trading purposes. Some banking entities have said that many transactions are presumed to be proprietary trading as a result of this provision, including transactions that were not the intended

target of the proprietary trading restriction.

The Volcker statute and the final rule provide several exclusions and exemptions from the proprietary trading prohibition.<sup>29</sup> However, banking entities have reported that complying with these exclusions and exemptions is unduly burdensome and the final rule’s requirements may result in banking entities underutilizing them. In particular, industry groups, members of Congress, and others have argued that the rule does not provide sufficient latitude for banking entities to engage in market-making, which they have argued may have a negative impact on some measures of market liquidity.<sup>30</sup>

#### *Questions on the Proprietary Trading Prohibition*

1. What evidence is there that the proprietary trading prohibition has been effective or ineffective in limiting banking entities’ risk-taking and reducing the likelihood of taxpayer bailouts? What evidence is there that the proprietary trading prohibition does or does not have a negative impact on market liquidity?

2. What type of objective factors could be used to define proprietary trading?

3. Should the rebuttable presumption provision be revised, whether by elimination, narrowing, or introduction of a reverse presumption that presumes activities are not proprietary trading? Are there activities for which rebuttal should not be available? Should rebuttal be available for specified categories of activity? Could the rebuttable presumption provision be implemented in a way that decreases the compliance burden for banking entities?

4. What additional activities, if any, should be permitted under the proprietary trading provisions? Please provide a description of the activity and

<sup>29</sup> 12 U.S.C. 1851(d); 12 CFR 44.3(d), 44.4, 44.5, 44.6.

<sup>30</sup> See, e.g., Thomas Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, Statement to House Committee on Financial Services, Subcommittee on Capital Markets, Securities, and Investment, U.S. House of Representatives (Mar. 29, 2017) (“It is very difficult to distinguish between market making and proprietary trading without arbitrarily imposing a demarcation. The Volcker Rule significantly constrains their ability by dictating how banks should manage their inventory. This will reduce the depth and liquidity of our capital markets.”); Tarullo, *Departing Thoughts* (“Achieving compliance under the current approach would consume too many supervisory, as well as bank, resources relative to the implementation and oversight of other prudential standards. And although the evidence is still more anecdotal than systematic, it may be having a deleterious effect on market making, particularly for some less liquid issues.”).

<sup>26</sup> 12 U.S.C. 1851(h)(6) (defining “trading account”).

<sup>27</sup> 12 CFR 44.3(b)(1)(i). The other two prongs of the trading account definition are the “market risk capital prong,” which applies to the purchase or sale of financial instruments that are both market risk capital rule covered positions and trading positions, and the “dealer prong,” which applies to the purchase or sale of financial instruments by a banking entity that is licensed or registered, or required to be licensed or registered, as a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such. 12 CFR 44.3(b)(1)(ii) and (iii).

<sup>28</sup> 12 CFR 44.3(b)(2).



discuss why it would be appropriate to permit the activity, including supporting data or other appropriate information.

5. How could the existing exclusions and exemptions from the proprietary trading prohibition—including the requirements for permissible market-making and risk mitigating hedging activities—be streamlined and simplified? For example, does the distinction between “market-maker inventory” and “financial exposure” help ensure that trading desks using the market-making exemption are providing liquidity or otherwise functioning as market makers?

6. How could additional guidance or adjusted implementation of the existing proprietary trading provisions help to distinguish more clearly between permissible and impermissible activities?

7. Are there any other issues related to the proprietary trading prohibition that should be addressed by regulatory action?

#### *Covered Funds Prohibition*

Section 13 of the BHC Act generally prohibits banking entities from acquiring or holding an ownership in or sponsoring any private equity fund or hedge fund.<sup>31</sup> Section 13 defines a hedge fund or private equity fund as an issuer that would be an investment company, as defined in the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the Agencies may, by rule, determine. The Agencies adopted the definition referencing sections 3(c)(1) and 3(c)(7) of the Investment Company Act in the final rule and also included certain commodity pools and foreign funds in the covered fund definition.<sup>32</sup> Recognizing that this definition may apply more broadly than necessary to achieve the Volcker Rule’s purposes, the Agencies excluded several categories of issuers from the definition of covered fund in the final rule and established requirements for certain permitted covered fund activities, such as organizing and offering a covered fund,<sup>33</sup> market making in covered fund interests,<sup>34</sup> and covered fund activities and investments outside of the United States.<sup>35</sup> Some have suggested that, notwithstanding the exclusions currently provided, the statutory definition referencing sections 3(c)(1) and 3(c)(7) of the Investment Company

Act continues to include within its scope many issuers that were not intended to be covered by section 13.<sup>36</sup>

The final rule also implements section 13’s restrictions on relationships with hedge funds and private equity funds.<sup>37</sup> The so-called “Super 23A” provision prohibits a banking entity that serves as investment manager, adviser, or sponsor to a covered fund from entering into a transaction with the covered fund (or any other covered fund controlled by the covered fund) if the transaction would be a covered transaction as defined in section 23A of the Federal Reserve Act.<sup>38</sup>

#### *Questions on the Covered Funds Prohibition*

1. What evidence is there that the final rule has been effective or ineffective in limiting banking entity exposure to private equity funds and hedge funds? What evidence is there that the covered fund definition is too broad in practice?

2. Would replacing the current covered fund definition that references sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 with a definition that references characteristics of the fund, such as investment strategy, fee structure, etc., reduce the compliance burden associated with the covered fund provisions? If so, what specific characteristics could be used to narrow the covered fund definition? Does data or other appropriate information support the use of a characteristics-based approach to fund investments?

3. What types of additional activities and investments, if any, should be permitted or excluded under the covered funds provisions? Please provide a description of the activity or investment and discuss why it would be appropriate to permit the activity or investment, including supporting data or other appropriate information.

4. Is section 14 of the final rule (the “Super 23A” provision) effective at limiting bank exposure to covered funds? Are there additional categories of transactions and relationships that should be permitted under this section?

<sup>36</sup> See American Bankers Association (“[T]he Volcker Rule regulations should apply only to those hedge funds and private equity funds that engage primarily in proprietary trading for near-term investment gains, thereby excluding funds (such as venture capital funds) . . . that do not raise the risks the Volcker Rule is intended to address.”); The Clearing House (“While the Agencies must implement the statute as Congress has enacted it, they have extended its reach to numerous other types of funds that bear little in relation to either private equity or hedge funds.”).

<sup>37</sup> 12 U.S.C. 1851(f).

<sup>38</sup> 12 U.S.C. 371c; 12 CFR 44.14; 12 CFR part 223.

5. How could additional guidance or adjusted implementation of the existing covered fund provisions help to distinguish more clearly between permissible and impermissible activities? For example, should the final rule be revised to clarify how the definition of “ownership interest” applies to securitizations?

6. Are there any other issues related to the covered funds prohibition that could be addressed by regulatory action?

#### *Compliance Program and Metrics Reporting Requirements*

The final rule adopted a tiered compliance program requirement based on the size, complexity, and type of activity conducted by each banking entity. Banking entities that do not engage in activities covered by the final rule other than trading in government obligations are not required to establish a compliance program unless they become engaged in covered activities.<sup>39</sup> Banking entities with assets of \$10 billion or less are eligible for a simplified compliance program.<sup>40</sup> Nonetheless, banking entities have reported that the compliance program requirements in the final rule present a compliance burden, especially for small institutions that are not engaged in significant levels of proprietary trading and covered fund activities. Section 20 and Appendix A of the final rule require certain of the largest banking entities engaged in significant trading activities to collect, evaluate, and furnish data regarding covered trading activities as an indicator of areas meriting additional attention by the banking entity and relevant Agency.<sup>41</sup>

#### *Questions on the Compliance Program, Metrics Reporting Requirements, and Additional Issues*

1. What evidence is there that the compliance program and metrics reporting requirements have facilitated banking entity compliance with the substantive provisions of the Volcker Rule? What evidence is there that the compliance program and metrics reporting requirements present a disproportionate or undue burden on banking entities?

2. How could the final rule be revised to reduce burden associated with the compliance program and reporting requirements? Responses should include supporting data or other appropriate information.

<sup>39</sup> 12 CFR 44.20(f)(1).

<sup>40</sup> 12 CFR 44.20(f)(2).

<sup>41</sup> 79 FR 5535, 5540.

<sup>31</sup> 12 U.S.C. 1851(a)(1)(B).

<sup>32</sup> 12 CFR 44.10(b)(1)(ii) and (iii).

<sup>33</sup> 12 CFR 44.11(a).

<sup>34</sup> 12 CFR 44.11(c).

<sup>35</sup> 12 CFR 44.13(b).

3. Are there categories of entities for which compliance program requirements should be reduced or eliminated? If so, please describe and include supporting data or other appropriate information.

4. How effective are the quantitative measurements currently required by the final rule? Are any of the measurements unnecessary to evaluate Volcker Rule compliance? Are there other measurements that would be more useful in evaluating Volcker Rule compliance?

5. How could additional guidance or adjusted implementation of the existing compliance program and metrics reporting provisions reduce the compliance burden? For example, should the rule permit banking entities to self-define their trading desks, subject to supervisory approval, so that banking entities report metrics on the most meaningful units of organization?

6. How could the final rule be revised to enable banking entities to incorporate technology-based systems when fulfilling their compliance obligations under the Volcker Rule? Could banking entities implement technology-based compliance systems that allow banking entities and regulators to more objectively evaluate compliance with the final rule? What are the advantages and disadvantages of using technology-based compliance systems when establishing and maintaining reasonably designed compliance programs?

7. What additional changes could be made to any other aspect of the final rule to provide additional clarity, remove unnecessary burden, or address any other issues?

Dated: August 1, 2017.

**Keith A. Noreika,**

*Acting Comptroller of the Currency.*

[FR Doc. 2017-16556 Filed 8-4-17; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

[Docket No.: FAA-2017-0782; Notice No. 91-348]

RIN 2120-AK87

#### Use of Automatic Dependent Surveillance-Broadcast (ADS-B) Out in Support of Reduced Vertical Separation Minimum (RVSM) Operations

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposal would revise the FAA's requirements for application to operate in RVSM airspace. The proposal would eliminate the requirement for operators to apply for an RVSM authorization when their aircraft are equipped with qualified ADS-B Out systems and meet specific altitude keeping equipment requirements for operations in RVSM airspace. This proposal recognizes the enhancements in aircraft monitoring resulting from the use of ADS-B Out systems and responds to requests to eliminate the burden and expense of the current RVSM application process for operators of aircraft equipped with qualified ADS-B Out systems.

**DATES:** Send comments on or before September 6, 2017.

**ADDRESSES:** Send comments identified by docket number FAA-2017-0782 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this

action, contact Madison Walton, Aviation Safety Inspector, Flight Technologies and Procedures Division, Flight Standards Services, AFS-400, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8850; email [Madison.Walton@faa.gov](mailto:Madison.Walton@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules with respect to aviation safety is found in Title 49, United States Code (49 U.S.C.). Sections 106(f), 40113(a), and 44701(a) authorize the FAA Administrator to prescribe regulations necessary for aviation safety. Under Section 40103(b), the FAA is charged with prescribing regulations to enhance the efficiency of the national airspace. This proposed rulemaking is within the scope of these authorities as it removes regulatory requirements that the FAA no longer finds necessary for safe operations in RVSM airspace and establishes requirements for the use of qualified ADS-B Out systems to facilitate operations in that airspace.

#### I. Executive Summary

##### A. Summary of the Proposed Rule

This proposal would permit an operator of an aircraft equipped with a qualified ADS-B Out system meeting altitude keeping equipment performance requirements for operations in RVSM airspace to operate in that airspace without requiring a specific authorization. Under this proposal the FAA would consider a qualified ADS-B Out system to be one that meets the requirements of § 91.227 of Title 14, Code of Federal Regulations (14 CFR).

The requirement for operators to obtain a specific RVSM authorization was first promulgated in 1997 when most aircraft required significant design changes to qualify for an authorization. At that time, operators lacked familiarity with RVSM operations and were required to submit a detailed application to the FAA for review to obtain an RVSM authorization. This application included information on the operator's compliance with RVSM equipment standards, a description of the operator's RVSM maintenance program, and evidence of initial and recurrent pilot training. Since then, operators have become more familiar with RVSM operations, requirements, and procedures. Additionally, the height-keeping performance of aircraft

equipped with ADS-B Out systems can be continually monitored to confirm that these aircraft are meeting RVSM performance standards. Based on the technological advances provided by ADS-B Out systems, detailed applications and specific authorizations for operators of these aircraft to conduct operations in RVSM airspace is no longer required.

Accordingly, under this proposal, the requirement to submit applications for RVSM authorization would no longer be applied to operators of aircraft that are equipped with qualified ADS-B Out systems and meet altitude-keeping equipment performance requirements for operations in RVSM airspace. By eliminating this application requirement, the proposal would reduce both operators' costs and FAA workload, while maintaining the existing level of safety. Additionally, since RVSM airspace has been implemented worldwide, the proposal would also remove the detailed designations of where RVSM may be applied that are currently found in Appendix G of part 91.

#### *B. Summary of Costs and Benefits*

This proposal would not impose any costs on regulated entities. The FAA estimates that the proposal would result in approximately \$35 million (30.8 million of 7% present value) in cost savings during the first 5 years of the rule's implementation primarily resulting from the ability of operators to operate their aircraft at more fuel efficient RVSM altitudes. The FAA estimates that this proposed rulemaking would save each affected small entity operating aircraft equipped with qualified ADS-B Out systems under parts 91 and 135 a total of \$1,630. Savings would result from the benefit of not having to apply for RVSM authorizations and from reduced fuel costs associated with not being restricted from RVSM operations while the authorization is processed.

## **II. Background**

### *A. Statement of the Problem*

The current process for obtaining RVSM authorizations was developed when RVSM airspace was initially implemented in 1997 (62 FR 17487; Apr. 9, 1997). At that time, most aircraft were not manufactured to comply with RVSM performance requirements and needed significant modifications to meet the altimetry system performance requirements necessary for flight in RVSM airspace. Since the reduced vertical separation standards employed in RVSM airspace were new to most

pilots and air traffic controllers, validation of operational policies and procedures to operate in that airspace was necessary to ensure effective implementation of these reduced vertical separation standards. To assist in accomplishing this task, the FAA established systems to provide height-keeping performance monitoring with the overall goal to ensure that aircraft airworthiness, maintenance, and operational approval requirements resulted in the level of safety and system performance necessary to operate in this airspace on a continuing basis. The technology originally used to monitor an aircraft's performance was limited and capable of only a small number of aircraft observations during a flight.

Since that time, RVSM technology has matured and most aircraft manufactured today that are capable of operating in RVSM airspace are delivered from the manufacturer as RVSM compliant. RVSM airspace has been implemented worldwide, familiarity with operational policy and procedures has significantly increased, and the vast majority of the RVSM capable fleet demonstrates excellent altimetry system performance.<sup>1</sup> Additionally, the increasing equipage of aircraft with ADS-B Out systems makes the current process of obtaining RVSM authorizations for operation of those aircraft in RVSM airspace unnecessary, as ADS-B Out enables continual monitoring of aircraft height-keeping performance and rapid notification of altimetry system error (ASE).

### *B. History of Vertical Separation Standards*

Vertical separation standards establish the minimum vertical distance between aircraft routes in the national airspace system. In the early 1970's, increasing air-traffic volume and fuel costs sparked an interest in reducing vertical separation standards for aircraft operating above Flight Level (FL)290.<sup>2</sup> At the time, the FAA required aircraft operating above FL290 to maintain a minimum of 2,000 feet of vertical separation between routes. Use of these high-altitude routes was desirable because the diminished atmospheric drag at high altitudes results in a

corresponding increase in aircraft fuel efficiency. Operators sought, and continue to seek, not only the most direct routes, but also the most efficient altitudes for their aircraft. Increased demand for these high-altitude routes, however, has resulted in greater aircraft congestion in this airspace.

In 1973, the Air Transport Association of America petitioned the FAA to reduce the vertical separation of high altitude routes from 2,000 feet to 1,000 feet. The FAA denied the petition in 1977, in part because the technology to meet these more rigorous separation standards was neither generally available nor proven. Deficiencies included insufficient aircraft altitude-keeping standards, lack of maintenance and operational standards, and limited altitude correction technology.

In mid-1981, the FAA initiated the Vertical Studies Program. This program, in conjunction with RTCA (formerly the Radio Technical Commission for Aeronautics) Special Committee (SC)-150 and the International Civil Aviation Organization (ICAO) Review of General Concept of Separation Panel (RGCSF), determined:

- RVSM is "technically feasible without imposing unreasonably demanding technical requirements on the equipment."
- RVSM could provide "significant benefits in terms of economy and en-route airspace capacity."
- Implementation of RVSM would require "sound operational judgment supported by an assessment of system performance based on: aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment."

Following these determinations, the FAA began a two-phase implementation process for RVSM operations for aircraft registered in the United States (U.S.). During the first phase in 1997, the FAA added § 91.706 (Operations within airspace designed as RVSM Airspace) and Appendix G (Operations in RVSM Airspace) to part 91 (62 FR 17487; Apr. 9, 1997). Section 91.706 permits operators of U.S.-registered aircraft to operate in RVSM airspace outside of the U.S. in accordance with the provisions of Appendix G. Appendix G contains a set of operational, design, maintenance, and other standards applicable to operators seeking to operate in RVSM airspace. It specifies a detailed application process that requires operators to provide evidence that the operator's aircraft design satisfies RVSM performance requirements and has policies and procedures for the safe conduct of RVSM operations. Until recently, it also required that the

<sup>1</sup> FAA analysis of 22,154 U.S. registered RVSM approved airplanes estimates that 99.9% of those aircraft operate within the ASE containment standards specified in part 91, Appendix G of part 91. The RVSM target level of safety in the national airspace has been met every year since 2003 when RVSM operations started.

<sup>2</sup> Above 18,000 feet, FL are a measure of altitude assigned in 500-foot increments; FL290 represents an altitude of 29,000 feet with standard atmospheric pressure of 29.92 inches in mercury (Hg).

operator have a specific program for the maintenance of RVSM systems and equipment. The FAA reviews the applications and grants authorizations to operate in RVSM airspace after finding that the applicable requirements are met.

The second phase of RVSM implementation occurred in October 2003, with a second RVSM-related rulemaking action (68 FR 61304; Oct. 27, 2003). This rule introduced RVSM airspace in the U.S. and used the same authorization process previously established under Appendix G to part 91. As established in 2003, the FAA's RVSM program allows for 1,000 feet of vertical separation for aircraft between FL290 and FL410. Before this final rule, air traffic controllers could only assign aircraft operating under Instrument Flight Rules (IFR) flying at FL290 and above to FL290, 310, 330, 350, 370, 390, and 410 since the existing vertical separation standard was 2,000 feet. After the rule changes went into effect, IFR aircraft could also fly at FL300, 320, 340, 360, 380, and 400—nearly doubling capacity within this particular segment of airspace.

The FAA also implemented a performance monitoring program to support implementation of RVSM. This program includes Global Positioning System (GPS)-based height-keeping monitoring units (GMUs) capable of being deployed onboard aircraft during individual RVSM flights. Later, in 2005, the FAA deployed the first of five passive ground-based aircraft geometric height measurement element (AGHME) sites in the continental U.S. to conduct height-keeping performance monitoring of aircraft passing over each site. Other civil aviation authorities throughout the world have also developed similar height monitoring sites.

In 2008, the FAA reviewed its RVSM program and operator authorization policies. At that time, there were more than 7,000 active RVSM authorizations, covering in excess of 15,000 U.S.-registered aircraft. The FAA's evaluation found the existing processes ensured compliance with the RVSM operating requirements. At the same time however, FAA representatives began meeting with the National Business Aviation Association (NBAA) to develop ways to streamline the RVSM application process to lower the burden on operators to obtain RVSM authorizations and reduce the FAA's workload associated with processing and granting these authorizations. The parties formed the RVSM Process Enhancement Team (PET) within the Performance based Aviation Rulemaking Committee. The PET

submitted its final recommendations to the FAA in 2013. As a result the FAA revised existing policies and guidance to facilitate more efficient processing of requests to change existing authorizations and created a job aid to assist inspectors in standardizing review of operator applications.

The FAA also completed rulemaking in 2016 to further reduce the burden on applicants by eliminating the requirement that RVSM applicants include an approved RVSM maintenance program as part of an application for an RVSM authorization. (81 FR 47009, Jul. 20, 2016)

### III. Discussion of the Proposal

This proposed rulemaking would permit operators of qualified ADS-B Out equipped aircraft to operate without submitting an application for an RVSM authorization when operating where the FAA has ADS-B coverage sufficient to confirm RVSM height-keeping performance. The proposal would eliminate this process for aircraft equipped with qualified ADS-B Out systems as a result of the agency's ability to effectively and continually monitor the height-keeping performance of these aircraft.

#### *A. Specific Requirements for Aircraft Equipped With Qualified ADS-B Out Systems*

This proposal would add a new Section 9 (Aircraft Equipped with Automatic Dependent Surveillance-Broadcast Out) to Appendix G of part 91. The proposal would authorize operators of aircraft, equipped with qualified ADS-B Out systems, (*i.e.* systems that meet the requirements of 14 CFR 91.227) that can be monitored by the FAA to conduct RVSM operations without submitting an application for an authorization to operate in RVSM airspace. The height-keeping performance of these aircraft would be required to be equivalent to that achieved by individual aircraft approved under current provisions of Section 2 of Appendix G.

To be eligible for operations in RVSM airspace an operator's aircraft must meet strict height-keeping performance standards. Under this proposal, an operator would be authorized to conduct flight in airspace in which RVSM is applied when the operator's aircraft complies with the provisions proposed in Section 9. These operations would be conducted in airspace where the FAA has ADS-B coverage sufficient to confirm RVSM height-keeping

performance.<sup>3</sup> No specific authorization would be necessary. However, an operator could still operate with an authorization issued under the provisions of Section 3 of Appendix G if its aircraft are not equipped with a qualified ADS-B Out system. The FAA also notes that if a foreign country requires a specific authorization to operate in RVSM airspace an operator may need to seek authorization under the provisions of Section 3, even if it meets the provisions of proposed Section 9.

When RVSM was first established, the FAA and other international air traffic service organizations developed systems for monitoring aircraft altitude-keeping performance. The systems are used to measure Total Vertical Error (TVE), including ASE. The overall goal of height-keeping performance monitoring is to ensure that airworthiness, maintenance and operational approval requirements result in required system performance and level of safety in the flight environment on an ongoing basis. Aircraft equipped with qualified ADS-B Out systems continuously transmit aircraft geometric position information used to calculate their height-keeping performance.

Operators wishing to take advantage of proposed Section 9's provisions would be required to operate aircraft equipped with a qualified ADS-B Out system installed as specified in proposed Section 9(a)(5) which would allow the FAA to monitor the aircraft height-keeping performance in RVSM airspace where the FAA has ADS-B coverage. This monitoring capability enables the FAA to eliminate the application process for RVSM authorization. The ADS-B Out equipment requirement in proposed Section 9(a)(5) is necessary for aircraft height-keeping performance monitoring, but not for aircraft height-keeping capability. Accordingly, as proposed in Section 9(a)(5), an aircraft that the FAA has previously been found to be operating within required height-keeping performance parameters may be authorized to operate in RVSM airspace when ADS-B Out is inoperable for a specific flight.

The proposal also specifies, in Section 9(a), the essential aircraft equipment and capabilities, including altitude measurement systems; altitude control systems; and altitude alert systems, required to be operational for the

<sup>3</sup> Airspace where the FAA has ADS-B coverage sufficient to confirm RVSM height-keeping performance is depicted at <https://www.faa.gov/nextgen/programs/adsb/coveragemap>. This coverage area may include airspace in which ADS-B equipage is not required.

aircraft to be eligible for RVSM. The proposed RVSM height-keeping equipment requirements in Section 9(a) are the same as those for non-ADS-B Out equipped aircraft in paragraph (c) of Section 2 of Appendix G. The FAA has determined the current fleet of RVSM approved aircraft consistently meet FAA established safety standards and accordingly has not proposed any changes to the current RVSM equipment standards for ADS-B Out equipped aircraft.<sup>4</sup>

The FAA notes that a Traffic Collision Avoidance Alert System (TCAS) is not specifically required for RVSM operations. Other FAA regulations specify when an aircraft must be equipped with a collision avoidance system. However, for operations in RVSM airspace, aircraft that are equipped with TCAS II must meet Technical Standards Order (TSO) C-119b and be modified to incorporate software Version 7.0, or a later version. This requirement is specified as an aircraft approval requirement in current paragraph (g) of Section 2 of Appendix G. The proposed requirement for operators of ADS-B Out equipped aircraft seeking to operate in RVSM airspace that are also equipped with TCAS II must meet TSO C-119b (Version 7.0), or later, is necessary because earlier TCAS software versions did not incorporate revised alert thresholds for traffic alerts (TA) and resolution advisories (RA) for FL300 through FL420 that are compatible with RVSM operations. These provisions for TCAS II equipped aircraft in paragraph (a)(4) of proposed Section 9 are identical to current provisions for existing RVSM aircraft approval under Section 2 of Appendix G.

Additionally, the FAA also proposes a single ASE containment requirement for aircraft equipped with ADS-B Out in proposed Section 9(b). This requirement corresponds to limits for ASE containment when RVSM was first established and is consistent with RVSM performance criteria used for aircraft approval in Section 2 of Appendix G. It allows performance monitoring to be applied to each aircraft without relying on aggregated data collected from many aircraft of the same RVSM monitoring group. For these operations, the FAA can rapidly detect when individual aircraft performance has deteriorated outside the proposed ASE tolerance. The proposal would require that aircraft continually meet this requirement to be eligible for RVSM

operations under the provisions of this proposed section.

#### *B. Removal of Specific Airspace Designations*

As discussed in the “Background” section of this document, RVSM was implemented regionally in a phased approach. Section 8 (*Airspace Designation*) of Appendix G was initially designed to be updated whenever regions added RVSM airspace. The inability to rapidly update these designations caused discrepancies between the airspace listed in Section 8 of Appendix G and the airspace in which RVSM had been applied. Today, however, RVSM has been established between FL290 and FL410 in all flight information regions (FIRs)<sup>5</sup> and requirements have been harmonized throughout ICAO member States. Accordingly, there is no longer a need to update the airspace designations listed in Section 8. The proposed amendment to this section acknowledges RVSM is now applied worldwide<sup>6</sup> and removes the detailed RVSM airspace designations from that section.

#### *C. Conforming Amendments*

Additional amendments to Appendix G to part 91 are proposed to facilitate the addition of the approval requirements specified in Section 9 for ADS-B Out equipped aircraft.

The proposed changes to Section 1 (*RVSM definition*), recognize that RVSM is no longer a new concept and that RVSM operations have become a standard operation between FL290 and FL410. Accordingly, the proposed changes to this section would remove the “special qualification” designation for RVSM airspace and references referring to operator specific approvals. Since RVSM has now been implemented worldwide, a reference to RVSM airspace identified in Section 8 is no longer needed and would be removed.

The proposed changes in Section 2 (*Aircraft Approval*) and Section 3 (*Operator Authorization*) recognize that aircraft operators may either, use the current aircraft approval process specified in Section 2 and the operator authorization process specified in Section 3, or the authorization process proposed in new Section 9 for aircraft equipped with qualified ADS-B Out

systems to obtain authorization to conduct RVSM operations.

Proposed changes to paragraphs (a), (b), and (c) in Section 3 (*Operator Authorization*) would not only allow for an operator to be authorized to conduct flight in airspace where RVSM is applied under the provisions of this section as is currently permitted but would also recognize that operators would be authorized to conduct RVSM operations under the provisions of proposed Section 9.

Additionally, under the provisions of current Section 3 (*Operator Authorization*), each operator must provide evidence that each of its pilots has adequate knowledge of RVSM requirements, policies, and procedures when applying for an RVSM authorization. To better clarify the intent of the rule, current Section 3(c) would be revised to state that “each pilot has knowledge of RVSM requirements, policies, and procedures sufficient for the conduct operations in RVSM airspace”.

To ensure the pilots of aircraft of operators who have been authorized to conduct RVSM operations in accordance with proposed Section 9 have knowledge of the requirements, policies, and procedures sufficient for the conduct operations in RVSM airspace, proposed paragraph (b)(3) would be added to Section 4 (*RVSM Operations*). The new provision is identical to revised Section 3(c)(2). Knowledge sufficient to conduct RVSM operations includes, but is not limited to; RVSM FL protocols, flight planning requirements, inflight procedures, and contingency procedures for areas of intended operation. The FAA publishes applicable guidance material in the Aeronautical Information Manual (AIM), Aeronautical Information Publication (AIP), and Advisory Circular (AC) 91-85. Proposed Section 4 has also been revised to specify that an operator may be authorized to conduct RVSM operations under the provisions of Section 3 (as is currently stated) or under proposed Section 9.

Section 5 (*Deviation Authority Approval*) would be revised to eliminate the specific references to Section 3 since the Administrator may authorize deviations from the requirements in § 91.180 and § 91.706 for a specific flight in RVSM airspace for operators who may not meet the provisions of current Section 3 or proposed Section 9. This section would be revised to address the inclusion of proposed Section 9 in Appendix G.

Currently Section 7 (*Removal or Amendment of Authority*) states that the Administrator may revoke or restrict an

<sup>4</sup> The RVSM target level of safety in the national airspace has been met every year since 2003 when RVSM operations started.

<sup>5</sup> A FIR is airspace of defined dimensions within which Flight Information Service and Alerting Service are provided. All U.S. airspace is contained with designated FIRs.

<sup>6</sup> An operator may choose to review a State's AIP for individual areas where RVSM is applied.

RVSM authorization or RVSM letter of authorization. This section would be revised to eliminate specific references to the revocation or restriction of RVSM authorizations and letters of authorization and replace those provisions with a more general provision stating that the Administrator may prohibit or restrict operation in RVSM airspace if an operator fails to comply with certain specified provisions. This revision is necessary as the current section only addresses the removal or amendment of authority through operations specifications, management specifications, and letters of authorization. As the proposal would permit RVSM operations to be conducted without a specific authorization document issued by the Administrator, this section has been revised to indicate that the Administrator may prohibit or restrict an operator's ability to operate in RVSM airspace even if that authorization is not specified in operations specifications, management specifications, or a letter of authorization.

#### *D. Implementing Information*

The FAA would perform height-keeping performance monitoring on ADS-B Out equipped flights operating at RVSM altitudes for all airspace defined in § 91.225. This monitoring capability is the result of the FAA having access to ADS-B data from flights in RVSM airspace which would be obtained during normal operations. ADS-B Out systems, meeting the performance requirements of § 91.227, transmit the necessary aircraft position information to allow the FAA to perform height-keeping performance monitoring on a continual basis. This level of monitoring was not previously available due to the limited number and range of AGHME systems or special effort required to fly with a GPS-based monitoring unit (GMU) on board an aircraft for an individual flight. The continual monitoring enabled by ADS-B Out provides increased height-keeping performance data on an individual aircraft basis and enables the FAA to identify poor ASE performance sooner, allowing quicker mitigation of any risk posed by poor performing aircraft. Additionally, in airspace where the U.S. performs ADS-B monitoring, operators of ADS-B Out aircraft would be able to begin RVSM operations immediately. This ability to operate immediately would lower costs and eliminate the delay caused during the processing of an application for authorization.

For operations outside U.S. airspace, where ADS-B height monitoring may

not be available, an aircraft that has recently been monitored by the FAA and found to be operating normally could be safely operated outside of FAA-monitored airspace with a high degree of confidence that the performance requirements would continue to be met.

The FAA has developed and maintains guidance for operators, based on statistical performance analysis, on the time interval that aircraft should return to airspace with FAA ADS-B monitoring capability or obtain a traditional RVSM approval to ensure that the aircraft meets applicable performance requirements. Advisory Circular AC 91-85, Authorization of Aircraft and Operators for Flight in Reduced Vertical Separation Minimum (RVSM) Airspace, includes the initial criteria which would be revised with ongoing monitoring experience. The FAA may also expand the airspace in which we collect ADS-B data, through collaboration with other air navigation service providers or operators.

The FAA will maintain a database of aircraft that have been monitored and are performing within the required performance as specified in proposed Section 9. When a new aircraft is entered into service, the operator must have the initial flight in airspace that can be monitored by the FAA in order to take advantage of proposed Section 9. For a new aircraft that is entered into service and cannot be monitored by the FAA (such as manufactured and delivered outside the U.S.), the operator should obtain an approval in accordance with section 3 before operating in RVSM airspace.

In addition, the FAA intends to transition current approvals, issued under section 3, to monitored operations under the provisions of section 9, in order to reduce the operator and FAA administrative burden of maintaining the section 3 approval. Once an operator's fleet of aircraft have been monitored, the FAA intends to notify the operator that the section 3 approval will be terminated and their authority to operate in RVSM transferred to the provisions of section 9. The FAA will allow operators to maintain their section 3 approval if the operator notifies the FAA that a specific authorization is required for operations in another country.

The FAA also plans to share ADS-B performance concepts and monitoring techniques with ICAO, so that other States can perform their own RVSM performance monitoring.<sup>7</sup> The FAA

<sup>7</sup> Currently Australia, Thailand, China, and Hong Kong utilize ADS-B Out for RVSM height-keeping

would publish guidance material addressing the frequency, durability, and coverage of our ADS-B monitoring that we find acceptable and work with ICAO to develop guidance applicable to RVSM capable aircraft equipped with ADS-B Out systems. The FAA would make aircraft performance summaries available to operators to assist them in assuring compliance with the RVSM performance requirements. The FAA believes that the implementing actions described in this proposal would reduce operator and FAA workload and expense, with no additional risk.

## **IV. Regulatory Notices and Analyses**

### *A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995; current value is \$155 million). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in Section 3(f) of Executive Order 12866, (3) is "nonsignificant" as defined in DOT's

performance monitoring. Eurocontrol, Japan, Russia, and other States are considering its use.



Regulatory Policies and Procedures; (4) would not have a significant economic impact on small entities; (5) would not create unnecessary obstacles to the foreign commerce of the U.S.; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

i. Who is potentially affected by this rule?

All operators intending to conduct operations between FL290 and FL410 (RVSM designated Airspace) and have 1,000 feet vertical separation applied. This applies to operations conducted under parts 91, 91K, 121, 125, and 135.

ii. Assumptions

- Present value estimates based on OMB guidance using a 7% discount rate.
- This proposed rule would become effective in 2018.
- The analysis period is 5 years from 2018 to 2022.

The average equipage rate of ADS-B Out in RVSM airspace will be 83% in 2018, 95% in 2019, and reach 100% on January 1, 2020.

iii. Benefits and Cost Savings of This Rule

The proposal would permit an operator of an aircraft meeting

equipment requirements for operations in RVSM airspace and equipped with a qualified ADS-B Out system to operate in RVSM airspace without requiring application for a specific authorization. This rulemaking proposes to eliminate this application requirement, thereby reducing both operators' costs and FAA workload, while maintaining the existing level of safety. The biggest savings comes not from the paperwork savings but from fuel savings. Currently operators without RVSM approval must operate their airplane at lower altitudes.

Total savings during the first 5 years of the rule's implementation would be approximately \$35.3 million (\$30.8 million present value at 7%).

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-

profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule would have a significant economic impact on a substantial number of small entities. If the agency determines that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. The FAA estimates that this proposed rulemaking would save each affected small entity operating aircraft equipped with qualified ADS-B Out systems under Part 91 and Part 135 \$1,630<sup>8</sup> from not having to apply for an RVSM authorization and from reduced fuel cost associated with not being restricted from RVSM operations while the authorization is processed. The FAA then compared this cost saving with a weighted average aircraft value of representative aircraft that would potentially be affected by this rule (See following table).

### Weighted Average Aircraft Value

Class	Most Common Type	Count in US MASPS*	Retail Value**	Weighted Values
Very Light Jet	Cessna Citation Mustang	266	\$3,459,900	\$920,333,400
Light Jet	Cessna Citation CJ3	328	\$6,900,000	\$2,263,200,000
Mid-Size Jet	Cessna Citation Excel/XLS	588	\$5,800,000	\$3,410,400,000
Super Mid-Size Jet	Cessna Citation Sovereign	290	\$18,093,350	\$5,247,071,500
Large Jet	Gulfstream IV	620	\$7,200,000	\$4,464,000,000
		2,092		\$16,305,004,900
		<b>Weighted Average:</b>	<b>\$7,793,979</b>	
*Source for aircraft counts: US Minimum Aircraft System Performance Specification - 18 Aug 2016				
**Source for average retail value: Aircraft Bluebook, Spring 2016 Vol. 16-1				

Owners of new turbojet or turboprop airplanes would receive a benefit of \$1,630 per new airplane. But, for new turbojet or turboprop airplanes whose value exceeds \$3 million, the cost savings of less than \$2,000 is not economically significant. If an agency determines that a rulemaking will not result in a significant economic impact

on a substantial number of small entities, the head of the agency may so certify under Section 605(b) of the RFA. Therefore, as provided in Section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign

<sup>8</sup> Total relief of \$1,630 for each Part 91 and Part 135 aircraft seeking authorization equipped with

ADS-B Out is the sum of the estimated \$214 per

application preparation relief, plus the per aircraft fuel savings estimate of \$1,416.

commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the U.S., so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards, and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have the same impact on domestic and international entities and thus has a neutral trade impact.

#### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this proposed rule.

#### *F. International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

#### *G. Environmental Analysis*

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the

absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

### **V. Executive Order Determinations**

#### *A. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

Executive Order 13771 titled “Reducing Regulation and Controlling Regulatory Costs,” directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” are subject to these requirements.

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated costs savings of this proposed rule can be found in the rule’s economic analysis.

#### *B. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

#### *C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

### **VI. Additional Information**

#### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or

views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

#### *B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office’s Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from



the Internet through the Federal eRulemaking Portal referenced in item (1) above.

#### List of Subjects in 14 CFR Part 91

Aircraft, Air traffic control, Aviation safety.

#### The Proposed Amendment

In consideration of the foregoing, the FAA proposes to amend Chapter I of title 14, Code of Federal Regulations as follows:

### PART 91—OPERATION AND FLIGHT RULES GENERAL

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11)

■ 2. Amend Appendix G to part 91 by:

- a. Revising the definition of Reduced Vertical Separation Minimum (RVSM) Airspace in Section 1;
- b. Revise paragraph 2(a) in Section 2;
- c. Revise paragraphs 3(a), 3(b) introductory text, 3(c) introductory text, and 3(c)(2) in Section 3;
- d. Revise paragraphs 4(b)(1) and 4(b)(2) and add paragraph 4(b)(3) in Section 4;
- e. Revise the introductory text and paragraph 5(b) in Section 5;
- f. Revise the introductory text in Section 7;
- g. Revise Section 8;
- h. Add Section 9.

The revisions and additions read as follows:

#### Section 1. Definitions

*Reduced Vertical Separation Minimum (RVSM) Airspace.* Within RVSM airspace, air traffic control (ATC) separates aircraft by a minimum of 1,000 feet vertically between FL 290 and FL 410 inclusive. Air-traffic control notifies operators of RVSM airspace by providing route planning information.

\* \* \* \* \*

#### Section 2. Aircraft Approval

(a) Except as specified in Section 9 of this appendix, an operator may be authorized to conduct RVSM operations if the Administrator finds that its aircraft comply with this section.

\* \* \* \* \*

#### Section 3. Operator Authorization

(a) Except as specified in Section 9 of this appendix, authority for an operator

to conduct flight in airspace where RVSM is applied is issued in operations specifications, a Letter of Authorization, or management specifications issued under subpart K of this part, as appropriate. To issue an RVSM authorization under this section, the Administrator must find that the operator's aircraft have been approved in accordance with Section 2 of this appendix and the operator complies with this section.

(b) Except as specified in Section 9 of this appendix, an applicant seeking authorization to operate within RVSM airspace must apply in a form and manner prescribed by the Administrator. The application must include the following:

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*

(c) In a manner prescribed by the Administrator, an operator seeking authorization under this section must provide evidence that:

- (1) \* \* \*
- (2) Each pilot has knowledge of RVSM requirements, policies, and procedures sufficient for the conduct of operations in RVSM airspace.

#### Section 4. RVSM Operations

- (a) \* \* \*
- (b) \* \* \*

(1) The operator is authorized by the Administrator to perform such operations in accordance with Section 3 or Section 9 of this appendix, as applicable.

(2) The aircraft—

(i) Has been approved and complies with Section 2 of this appendix; or

(ii) Complies with Section 9 of this appendix.

(3) Each pilot has knowledge of RVSM requirements, policies, and procedures sufficient for the conduct of operations in RVSM airspace.

#### Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or § 91.706 for a specific flight in RVSM airspace if—

(a) \* \* \*

(b) At the time of filing the flight plan for that flight, ATC determines that the aircraft may be provided appropriate separation and that the flight will not interfere with, or impose a burden on, RVSM operations.

\* \* \* \* \*

#### Section 7. Removal or Amendment of Authority

The Administrator may prohibit or restrict an operator from conducting

operations in RVSM airspace, if the Administrator determines that the operator is not complying, or is unable to comply, with this appendix or subpart H of this part. Examples of reasons for amendment, revocation, or restriction include, but are not limited to, an operator's:

\* \* \* \* \*

#### Section 8. Airspace Designation

RVSM may be applied in all ICAO Flight Information Regions (FIRs).

#### Section 9. Aircraft Equipped With Automatic Dependent Surveillance—Broadcast Out

An operator is authorized to conduct flight in airspace in which RVSM is applied provided:

(a) The aircraft is equipped with the following:

- (1) Two operational independent altitude measurement systems.
- (2) At least one automatic altitude control system that controls the aircraft altitude—

(i) Within a tolerance band of  $\pm 65$  feet about an acquired altitude when the aircraft is operated in straight and level flight under nonturbulent, nongust conditions; or

(ii) Within a tolerance band of  $\pm 130$  feet under nonturbulent, nongust conditions for aircraft for which application for type certification occurred on or before April 9, 1997 that are equipped with an automatic altitude control system with flight management/performance system inputs.

(3) An altitude alert system that signals an alert when the altitude displayed to the flight crew deviates from the selected altitude by more than—

(i)  $\pm 300$  feet for aircraft for which application for type certification was made on or before April 9, 1997; or

(ii)  $\pm 200$  feet for aircraft for which application for type certification is made after April 9, 1997.

(4) A TCAS II that meets TSO C-119b (Version 7.0), or a later version, if equipped with TCAS II, unless otherwise authorized by the Administrator.

(5) Unless authorized by ATC or the foreign country where the aircraft is operated, an ADS-B Out system that meets the equipment performance requirements of § 91.227 of this part. The aircraft must have its height-keeping performance monitored in a form and manner acceptable to the Administrator.

(b) The altimetry system error (ASE) of the aircraft does not exceed 200 feet when operating in RVSM airspace.

Issued under authority provided by 49 U.S.C. 106(f), 40103(b), 40113(a), and 44701(a) in Washington, DC, on July 26, 2017.

John Barbagallo,

Deputy Director, Flight Standards Service.

[FR Doc. 2017-16197 Filed 8-4-17; 8:45 am]

BILLING CODE 4910-13-P

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Chapter II

[CPSC Docket No. CPSC-2015-0022]

#### Products Containing Organohalogen Flame Retardants; Notice of Opportunity for Oral Presentation of Comments

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of opportunity for oral presentation of comments.

**SUMMARY:** The Consumer Product Safety Commission (CPSC or Commission) announces that there will be an opportunity for interested persons to present oral comments on the petition requesting that the Commission initiate rulemaking under the Federal Hazardous Substances Act (FHSA) to declare several categories of products containing additive organohalogen flame retardants to be “banned hazardous substances.”

**DATES:** The meeting will begin at 10 a.m., September 14, 2017. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Daylight Time (EDT) on August 31, 2017.

**ADDRESSES:** The meeting will be held at 4330 East West Highway, Bethesda, MD 20814. Requests to make oral presentations, and texts of oral presentations, should be captioned: “Organohalogen Flame Retardants Petition; Oral Presentation” and submitted by email to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, not later than 5 p.m. EDT on August 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** For information about the purpose or subject matter of this meeting, contact Michael Babich, Division of Toxicology & Risk Assessment, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987-2606. For information about the procedure to make an oral presentation, contact Rockelle

Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On July 1, 2015, the Commission received a petition requesting that the Commission initiate rulemaking under the FHSA to declare several categories of products containing additive organohalogen flame retardants to be “banned hazardous substances.” The petition was filed by Earthjustice and the Consumer Federation of America, which are joined by American Academy of Pediatrics, American Medical Women’s Association, Consumers Union, Green Science Policy Institute, International Association of Fire Fighters, Kids in Danger, Philip Landrigan, M.D., M.P.H., League of United Latin American Citizens, Learning Disabilities Association of America, and Worksafe. CPSC staff has prepared a briefing package in response to the petition; the briefing package, which includes the petition in its entirety, is available at <https://www.cpsc.gov/s3fs-public/PetitionHP15-1RequestingRulemakingonCertainProductsContainingOrganohalogenFlameRetardants.pdf?atTsasSaCiSMf1Z-2CfvISjMHFEWkZ7>.

##### B. The Public Meeting

The Commission is providing this forum for oral presentations concerning the petition. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice for information on making requests to give oral presentations at the meeting.

Participants should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners. To prevent duplicative presentations, groups will be directed to designate a spokesperson. The Commission reserves the right to limit the time further for any presentation and impose restrictions to avoid excessive duplication of presentations.

Dated: August 2, 2017.

**Todd A. Stevenson,**

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2017-16588 Filed 8-4-17; 8:45 am]

BILLING CODE 6355-01-P

## POSTAL REGULATORY COMMISSION

### 39 CFR part 3050

[Docket No. RM2017-11; Order No. 4024]

#### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is announcing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to an analytical method for use in periodic reporting (Proposal Seven). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 15, 2017.

**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. Proposal Seven
- III. Notice and Comment
- IV. Ordering Paragraphs

##### I. Introduction

On July 28, 2017, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes to an analytical method relating to periodic reports.<sup>1</sup> The Petition identifies the proposed analytical method changes filed in this docket as Proposal Seven.

##### II. Proposal Seven

The Postal Service explains that for many years it has calculated the “USPS Marketing Mail” dropship passthroughs for flats and parcels rate categories only with reference to the per-pound price element above the piece-pound breakpoint. For greater accuracy it proposes to include the per-piece price element below the breakpoint in the calculation. Petition, Proposal Seven at 1.

<sup>1</sup> Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Seven), July 28, 2017 (Petition).

**Background.** As currently calculated, the traditional passthrough for “USPS Marketing Mail” flats and parcels divides the discount by the avoided cost as shown in Table 1 attached to the Petition.<sup>2</sup> The numerator is the per-pound discount above the breakpoint, for pieces above the breakpoint, versus origin-entered. The denominator is the average avoided cost per pound for all volume, both above and below the breakpoint, versus origin-entered. Petition, Proposal Seven at 1. The Postal Service states this has two shortcomings. The numerator does not include the other price element that varies by depth of entry, the per-piece price element below the breakpoint. *Id.* Second, the numerator and denominator are mismatched; the numerator represents volume above the breakpoint while the denominator represents volume both above and below the breakpoint. *Id.* at 1–2.

**Proposal.** The Postal Service proposes to calculate dropship passthroughs of “USPS Marketing Mail” flats and parcels rate categories to reflect both price elements that vary by depth of entry (per-pound above the breakpoint and per-piece below the breakpoint) as shown in column (i) of Table 1. *Id.* at 2. The Postal Service says this calculation now divides the entire value of the dropship discount, both per piece and per pound, by the total avoided cost. While the denominator can be expressed as either the total avoided cost per piece times the total number of pieces or the total avoided cost per pound times the total number of pounds, Table 1 opts for the former alternative, cost per piece times the total number of pieces  $[(f) \times ((a) + (b))]$ . *Id.*

**Impacts.** The Postal Service states that the proposed methodology could provide a more accurate representation of passthroughs to ensure discounts do not exceed the Postal Service cost avoided as a result of dropshipping. *Id.* Under the proposal, one passthrough reported in the FY 2016 Annual Compliance Report would have increased from 75.7 percent to 111.0 percent.<sup>3</sup> If adopted, the Postal Service would seek to reset the passthrough at 100 percent or less in the next market dominant price adjustment proceeding or cite a statutory exception. Petition, Proposal Seven at 2–3.

### III. Notice and Comment

The Commission establishes Docket No. RM2017–11 for consideration of

matters raised by the Petition. More information on the Petition may be accessed via the Commission’s Web site at <http://www.prc.gov>. Interested persons may submit comments on the Petition and Proposal Seven no later than September 15, 2017. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2017–11 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Seven), filed July 28, 2017.

2. Comments by interested persons in this proceeding are due no later than September 15, 2017.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,  
Secretary.

[FR Doc. 2017–16543 Filed 8–4–17; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

### 39 CFR part 3050

[Docket No. RM2017–10; Order No. 4023]

### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is announcing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to an analytical method for use in periodic reporting (Proposal Six). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 15, 2017.

**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Proposal Six
- III. Notice and Comment
- IV. Ordering Paragraphs

### I. Introduction

On July 28, 2017, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting the Commission to initiate an informal rulemaking proceeding to consider proposed changes to an analytical method related to periodic reports.<sup>1</sup> The Petition identifies the proposed analytical method changes filed in this docket as Proposal Six.

### II. Proposal Six

**Background.** In January 2016, the Postal Service removed the originating network distribution center and network distribution center presort price categories for Parcel Select and the return network distribution center price category for Parcel Return Service (PRS). Petition, Proposal Six at 1. The Postal Service states that “[d]uring the process of modifying these models to remove the portions of the cost studies related to the discontinued price categories, the Postal Service detected some minor errors that required correction.” *Id.* The Postal Service conducted a review of these models to “ensure that they reflected current processing methods” and determine if new data could be incorporated. *Id.*

**Proposal.** The Postal Service seeks to revise the mail processing and transportation cost models for Parcel Select and PRS mail. The proposed changes update the cost models, correct errors, incorporate new data, and re-evaluate some assumptions and methodologies.

**Impact.** The Postal Service estimates that its proposed changes will result in adjustments to both its mail processing and transportation models for Parcel Select and PRS mail.

For mail processing costs, the revisions will decrease Parcel Select Ground Machinable unit cost estimates by 3.4 percent. Petition, Proposal Six at

<sup>2</sup> Petition, Excel file “Prop.7.Dropship\_Passthroughs.xlsx,” column (h).

<sup>3</sup> *Id.*, see Petition, Excel file “Prop.7.Dropship\_Passthroughs.xlsx,” columns (h) and (i).

<sup>1</sup> Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), July 28, 2017 (Petition).

15, 18. The proposed changes will result in six adjustments to PRS mail processing costs, including a decrease of more than 30 percent in return delivery unit oversize costs. *Id.*

The transportation cost adjustments incorporate methodology changes approved by the Commission in Order No. 3973<sup>2</sup> with the cost model changes the Postal Service proposes in this docket. The resulting Parcel Select cost decreases range from 6.4 to 94.6 percent. Petition, Proposal Six at 15–16, 19. Additionally, the transportation cost for destination sectional center facility rates will increase by 193 percent. *Id.* at 16, 19. The PRS costs for return sectional center facility will decrease by almost 26 percent. *Id.*

### III. Notice and Comment

The Commission establishes Docket No. RM2017–10 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's Web site at <http://www.prc.gov>. Interested persons may submit comments on the Petition and Proposal Six no later than September 15, 2017. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is designated as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2017–10 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), filed July 28, 2017.

2. Comments by interested persons in this proceeding are due no later than September 15, 2017.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**  
Secretary.

[FR Doc. 2017–16517 Filed 8–4–17; 8:45 am]

**BILLING CODE 7710-FW-P**

<sup>2</sup> Docket No. RM2016–12, Order on Analytical Principles Used in Periodic Reporting (Proposal Four), June 22, 2017 (Order No. 3973).

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2016–0462; FRL–9965–68–Region 4]

### Air Plan Approval; Kentucky; Regional Haze Progress Report

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet, Division of Air Quality (KDAQ) on September 17, 2014. Kentucky's September 17, 2014, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). EPA is proposing to approve Kentucky's determination that the Commonwealth's regional haze plan is adequate to meet these RPGs for the first implementation period covering through 2018 and requires no substantive revision at this time.

**DATE:** Comments must be received on or before September 6, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0462 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

### FOR FURTHER INFORMATION CONTACT:

Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by phone at (404) 562–9031 and via electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

States are required to submit a progress report in the form of a SIP revision that evaluates progress towards the RPGs for each mandatory Class I federal area<sup>1</sup> (Class I area) within the state and for each Class I area outside the state which may be affected by emissions from within the state. 40 CFR 51.308(g). In addition, the provisions of 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze plan. The progress report is due five years after submittal of the initial regional haze plan. Kentucky submitted its regional haze plan on June 25, 2008, as later amended in a SIP revision submitted on May 28, 2010.<sup>2</sup>

Like many other states subject to the Clean Air Interstate Rule (CAIR), Kentucky relied on CAIR in its regional haze plan to meet certain requirements of EPA's Regional Haze Rule, including best available retrofit technology (BART) requirements for emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) from certain electric generating units (EGUs) in the Commonwealth.<sup>3</sup> This reliance was consistent with EPA's regulations at the time that Kentucky developed its regional haze plan. *See* 70 FR 39104 (July 6, 2005). However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to

<sup>1</sup> Areas designated as mandatory Class I federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). Listed at 40 CFR part 81 Subpart D.

<sup>2</sup> Throughout this document, references to Kentucky's "regional haze plan" refer to Kentucky's original June 25, 2008, regional haze SIP submittal, as later amended in a SIP revision submitted on May 28, 2010.

<sup>3</sup> CAIR required certain states, including Kentucky, to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> that significantly contribute to downwind nonattainment of the 1997 National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM<sub>2.5</sub>) and ozone. *See* 70 FR 25162 (May 12, 2005).

EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and issued Federal Implementation Plans (FIPs) to implement the rule in CSAPR-subject states.<sup>4</sup> Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program. However, numerous parties filed petitions for review of CSAPR, and at the end of 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11–1302.

On March 30, 2012, EPA finalized a limited approval of Kentucky's regional haze plan as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. Also in this March 30, 2012, action, EPA finalized a limited disapproval of Kentucky's regional haze plan because of deficiencies arising from the Commonwealth's reliance on CAIR to satisfy certain regional haze requirements. See 77 FR 19098. On June 7, 2012, EPA promulgated FIPs to replace reliance on CAIR with reliance on CSAPR to address deficiencies in CAIR-dependent regional haze plans of several states, including Kentucky's regional haze plan. See 77 FR 33642. Following additional litigation and the lifting of the stay, EPA began implementation of CSAPR on January 1, 2015.

On September 17, 2014, Kentucky submitted its Progress Report which, among other things, detailed the progress made in the first period toward implementation of the long term strategy outlined in the Commonwealth's regional haze plan; the visibility improvement measured at Mammoth Cave National Park (Mammoth Cave), the only Class I area within Kentucky, and at Class I areas outside of the Commonwealth potentially impacted by emissions from Kentucky; and a determination of the adequacy of the Commonwealth's existing regional haze plan. EPA is proposing to approve Kentucky's September 17, 2014, Progress Report for the reasons discussed below.

## II. EPA's Evaluation of Kentucky's Progress Report and Adequacy Determination

### A. Regional Haze Progress Report

This section includes EPA's analysis of Kentucky's Progress Report, and an explanation of the basis for the Agency's proposed approval.

#### 1. Control Measures

In its Progress Report, Kentucky summarizes the status of the emissions reduction measures that were relied upon by Kentucky in its regional haze plan and included in the final iteration of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional haze emissions inventory and RPG modeling used by the Commonwealth in developing its regional haze plan. The measures include, among other things, applicable Federal programs (e.g., mobile source rules, Maximum Achievable Control Technology standards), Federal consent agreements, and Federal control strategies for EGUs. Kentucky also reviewed the status of BART requirements for the five BART-subject sources for particulate matter (PM) in the Commonwealth—American Electric Power (AEP) Big Sandy Plant, E.ON U.S. Mill Creek Station, East Kentucky Power Cooperative (EKPC) Cooper Station, EKPC Spurlock Station, and Tennessee Valley Authority (TVA) Paradise Plant—and described the court decisions addressing CAIR and CSAPR at the time of progress report development.<sup>5</sup>

As discussed above, a number of states, including Kentucky, submitted regional haze SIPs that relied on CAIR to meet certain regional haze requirements. EPA finalized a limited disapproval of Kentucky's regional haze plan due to this reliance and promulgated a FIP to replace the Commonwealth's reliance on CAIR with reliance on CSAPR. Although a number of parties challenged the legality of CSAPR and the D.C. Circuit initially vacated and remanded CSAPR to EPA in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), the United States Supreme Court reversed the D.C. Circuit's decision on April 29, 2014, and remanded the case to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, and CSAPR is now in effect. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). Kentucky notes in its Progress Report

that it has an EPA-approved CAIR SIP and that CAIR was in effect at the time of Progress Report submittal due to the 2011 CSAPR stay. Because CSAPR should result in greater emissions reductions of SO<sub>2</sub> and NO<sub>x</sub> than CAIR throughout the affected region, EPA expects Kentucky to maintain and continue its progress towards its RPGs for 2018 through continued, and additional, SO<sub>2</sub> and NO<sub>x</sub> reductions. See generally 76 FR 48208 (August 8, 2011).

The Commonwealth also discusses in its Progress Report the status of several measures that were not included in the final VISTAS emissions inventory and were not relied upon in the initial regional haze plan to meet RPGs. These measures include EPA's Mercury and Air Toxics Rule, three Federal consent decrees, and planned retirements and fuel switching at several EGUs in Kentucky. The Commonwealth notes that the emissions reductions from these measures will help ensure that Class I areas impacted by Kentucky sources achieve their RPGs.

In its regional haze plan and Progress Report, Kentucky focuses its assessment on SO<sub>2</sub> emissions from EGUs because of VISTAS' findings that ammonium sulfate accounted for 69–87 percent of the visibility-impairing pollution in the VISTAS states and roughly 82 percent of the visibility-impairing pollution at Mammoth Cave National Park on the 20 percent worst visibility days. Although Kentucky determined in its regional haze plan that no additional controls for sources in the Commonwealth were needed to make reasonable progress for SO<sub>2</sub> during the first implementation period,<sup>6</sup> Kentucky's Progress Report identifies the control status of eight out-of-state EGUs, six from Indiana and two from Tennessee, located in the area of influence of Kentucky's Class I area using the Commonwealth's methodology for determining sources eligible for a reasonable progress control determination. Because these eight EGUs were subject to CAIR and Mammoth Cave National Park was projected to exceed the uniform rate of progress during the first implementation period, KDAQ opted not to request from Indiana and Tennessee any additional emissions reductions for reasonable progress for the first implementation period.<sup>7</sup> Kentucky's Progress Report indicates that SO<sub>2</sub> emissions from these eight out-of-state EGUs have decreased by nearly 50 percent from 2002 to 2012.

<sup>6</sup> See 76 FR 78204.

<sup>7</sup> See 76 FR 78213 and Kentucky Progress Report, p. 37.

<sup>4</sup> CSAPR requires substantial reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs in 28 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 PM<sub>2.5</sub> and ozone NAAQS and 2006 PM<sub>2.5</sub> NAAQS.

<sup>5</sup> Kentucky Progress Report, pp. 33–35.

In addition, the Commonwealth provides an update on the control status of EGUs in Kentucky identified by Maine, New Jersey, New Hampshire, and Vermont as contributing to visibility impairment at Class I areas located in those states based on 2002 emissions. These states are members of the Mid-Atlantic/Northeast Visibility Union (MANE-VU), which identified 167 EGU “stacks,” 10 of which are in Kentucky, as contributing significantly to visibility impairment at MANE-VU Class I areas in 2002. The 10 EGU stacks are located at: Duke Energy’s East Bend plant; EKPC’s Cooper and Spurlock plants; AEP Big Sandy plant; E.ON U.S. E.W. Brown, Ghent, and Mill Creek plants; and TVA Paradise. MANE-VU asked Kentucky to control the SO<sub>2</sub> emissions from these EGUs with a 90 percent control efficiency and to adopt a control strategy to provide a 28 percent reduction in SO<sub>2</sub> emissions from non-EGU emission sources that would be equivalent to MANE-VU’s proposed low sulfur residential fuel oil strategy.

In its Progress Report, the Commonwealth notes that the Kentucky EGUs identified by MANE-VU either have or will have scrubbers with a minimum SO<sub>2</sub> control efficiency of 90 percent or are scheduled for retirement by 2018. Kentucky also notes that there was a decrease of 196,753 tons in SO<sub>2</sub> emissions from 2002 to 2012<sup>8</sup> at these EGUs and that planned retirements at these EGUs will result in an additional

SO<sub>2</sub> emissions decrease of 30,845 tons by 2018 from these units.

EPA proposes to find that Kentucky has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding the implementation status of control measures because the Commonwealth described the implementation of measures within Kentucky, including BART at BART-subject sources for PM.

## 2. Emissions Reductions

As discussed above, Kentucky focused its assessment in its regional haze plan and Progress Report on SO<sub>2</sub> emissions from EGUs because of VISTAS’ findings that ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states. In its Progress Report, Kentucky provides SO<sub>2</sub> emissions data from EPA’s Clean Air Markets Division (CAMD) for each coal-fired EGU in the Commonwealth. Actual SO<sub>2</sub> emissions reductions from 2002 to 2012 for these Kentucky EGUs (300,335 tons) have already exceeded the projected SO<sub>2</sub> emissions reductions from 2002 to 2018 estimated in Kentucky’s regional haze plan for these EGUs (261,234 tons).<sup>9</sup> Kentucky also includes cumulative SO<sub>2</sub> and NO<sub>x</sub> CAMD emissions data from 2002–2012 for EGUs in the Commonwealth subject to reporting under the Acid Rain Program. This data shows a decline in these emissions over this time period and shows that the SO<sub>2</sub> reductions are greater than those

estimated for these units between 2002–2018 in the Commonwealth’s regional haze plan. The emissions reductions identified by Kentucky are due, in part, to the implementation of measures included in the Commonwealth’s regional haze plan (*e.g.*, CAIR).

EPA proposes to find that Kentucky has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding emissions reductions because the Commonwealth identifies SO<sub>2</sub> emissions reductions from EGUs in Kentucky, the largest sources of SO<sub>2</sub> emissions in the Commonwealth.

## 3. Visibility Conditions

The provisions under 40 CFR 51.308(g) require that states with Class I areas within their borders provide information on current visibility conditions and the difference between current visibility conditions and baseline visibility conditions expressed in terms of five-year averages of these annual values.

Kentucky’s Progress Report provides figures with visibility monitoring data for Mammoth Cave. Kentucky reported current visibility conditions as both the 2006–2010 and 2009–2013 five-year time periods and used the 2000–2004 baseline period for its Class I area.<sup>10</sup> Table 1, below, shows the visibility conditions for both the 2006–2010 and 2009–2013 five-year time periods and the difference between these current visibility conditions and baseline visibility conditions.

TABLE 1—BASELINE VISIBILITY, CURRENT VISIBILITY, AND VISIBILITY CHANGES IN KENTUCKY’S CLASS I AREA  
[deciviews]

Class I area	Baseline (2000–2004)	Current (2006–2010)	Difference	More current (2009–2013)	Difference
<b>20% Worst Days</b>					
Mammoth Cave National Park .....	31.37	29.09	– 2.28	25.09	– 6.28
<b>20% Best Days</b>					
Mammoth Cave National Park .....	16.51	15.41	– 1.10	13.69	– 2.82

As shown in Table 1, Mammoth Cave saw an improvement in visibility between baseline and the 2006–2010 and 2009–2013 time periods.<sup>11</sup> Kentucky also reported 20 percent worst day and 20 percent best day visibility data for Mammoth Cave from 2006–2013 for each year in terms of five-year averages.<sup>12</sup> This data shows an

improvement in visibility at Mammoth Cave on the 20 percent best days from 2006–2013 and on the 20 percent worst days from 2007–2013.

EPA notes that Kentucky’s original RPGs were based on the VISTAS modeling run available at the time of Kentucky’s June 25, 2008, regional haze plan. In 2008, VISTAS provided

updated modeling results that changed the modeled progress for Kentucky’s Class I area. Table 2 identifies the RPGs for Mammoth Cave in the Commonwealth’s regional haze plan and provides, for comparison purposes only, the updated RPGs provided by VISTAS.<sup>13</sup>

<sup>8</sup> Kentucky Progress Report, Table 15, pp.62–65. The emissions reductions are based on data from EPA’s Clean Air Markets Division provided in the Progress Report.

<sup>9</sup> Kentucky Progress Report, Table 14, pp. 53–60.

<sup>10</sup> For the first regional haze plans, “baseline” conditions were represented by the 2000–2004 time period. See 64 FR 35730 (July 1, 1999).

<sup>11</sup> Kentucky Progress Report, Tables 17 and 18, pp. 67–68.

<sup>12</sup> Kentucky Progress Report, Table 18, p.68.

<sup>13</sup> Kentucky Progress Report, Table 16, p. 66.

TABLE 2—UPDATED RPGS FOR KENTUCKY'S CLASS I AREA  
[deciviews]

Class I area Mammoth Cave National Park	RPG 20% worst days	RPG 20% best days
Original RPGs .....	25.56	15.57
Updated RPGs .....	25.40	15.42

EPA proposes to find that Kentucky has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding visibility conditions because the Commonwealth provided baseline visibility conditions (2000–2004), current conditions based on the most recently available visibility monitoring data available at the time of Progress Report development, the difference between these current sets of visibility conditions and baseline visibility conditions, and the change in visibility impairment from 2006–2013.

#### 4. Emissions Tracking

In its Progress Report, Kentucky presents data from a statewide actual emissions inventory for 2007 and compares this data to the baseline emissions inventory for 2002 (actual and typical emissions).<sup>14</sup> The pollutants inventoried include VOC, NH<sub>3</sub>, NO<sub>x</sub>, PM<sub>2.5</sub>, coarse particulate matter (PM<sub>10</sub>), and SO<sub>2</sub>. The emissions inventories include the following source classifications: point, area, fires, non-road mobile, and on-road mobile sources. As discussed in Section II.A.2, above, Kentucky also presented NO<sub>x</sub> and SO<sub>2</sub> data from 2002–2012 for EGUs in Kentucky.

Kentucky estimated on-road mobile source emissions in the 2007 inventory using EPA's MOVES model. This model tends to estimate higher emissions for NO<sub>x</sub> and PM than its previous counterpart, EPA's MOBILE6.2 model, used by the Commonwealth to estimate on-road mobile source emissions for the 2002 inventories. Despite the change in methodology, with the exception of a slight increase in PM<sub>2.5</sub> and PM<sub>10</sub>, 2007 actual emissions are lower for all inventoried emissions than both the actual and typical 2002 emissions, as can be seen when comparing Tables 3 and 4 to Table 5.

TABLE 3—2002 ACTUAL EMISSIONS INVENTORY SUMMARY FOR KENTUCKY  
[tpy]

Source category	NH <sub>3</sub>	NO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC
Point .....	1,000	237,209	21,326	14,173	518,086	46,321
Area .....	51,135	39,507	233,559	45,453	41,805	95,375
On-Road Mobile .....	5,055	156,417	3,723	2,697	6,308	103,503
Non-Road Mobile .....	31	104,571	6,425	6,046	14,043	44,805
Fires .....	44	1,142	5,226	5,074	49	2,640
Total .....	57,265	538,846	270,259	73,443	580,291	292,644

TABLE 4—2002 TYPICAL EMISSIONS INVENTORY SUMMARY FOR KENTUCKY  
[tpy]

Source category	NH <sub>3</sub>	NO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC
Point .....	995	240,362	21,421	14,219	529,182	46,315
Area .....	51,135	39,507	233,559	45,453	41,805	95,375
On-Road Mobile .....	5,055	156,417	3,723	2,697	6,308	103,503
Non-Road Mobile .....	31	104,517	6,425	6,046	14,043	44,805
Fires .....	110	1,460	6,667	6,310	136	3,338
Total .....	57,326	542,317	271,795	74,725	591,474	293,336

TABLE 5—2007 ACTUAL EMISSIONS INVENTORY SUMMARY FOR KENTUCKY  
[tpy]

Source category	NH <sub>3</sub>	NO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC
Point .....	113	210,213	30,678	21,110	410,413	47,679
Area .....	52,332	12,693	226,829	40,341	15,590	75,100
On-Road Mobile .....	2,172	133,425	5,524	4,363	1,022	55,883
Non-Road Mobile .....	46	63,454	4,207	3,969	3,037	38,785
Fires .....	138	1,377	5,016	4,678	180	2,939

<sup>14</sup> For the typical 2002 stationary point source emissions inventory, the EGU emissions are adjusted for a typical year so that if sources were

shut down or are operating above or below normal, the emissions are normalized to a typical emissions inventory year. The typical year data is used to

develop projected typical future year emissions inventories.

TABLE 5—2007 ACTUAL EMISSIONS INVENTORY SUMMARY FOR KENTUCKY—Continued  
[tpy]

Source category	NH <sub>3</sub>	NO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC
Total .....	54,801	421,163	272,254	74,461	430,242	220,386

EPA is proposing to find that Kentucky adequately addressed the provisions of 40 CFR 51.308(g) regarding emissions tracking because the Commonwealth compared the most recent updated emission inventory data available at the time of Progress Report development with the baseline emissions used in the modeling for the regional haze plan. Furthermore, Kentucky evaluated available CAMD SO<sub>2</sub> emissions data from 2002 to 2012 for Kentucky EGUs because this data was available at the time of Progress Report development, ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states, and EGUs are the largest source of SO<sub>2</sub> in the Commonwealth.

#### 5. Assessment of Changes Impeding Visibility Progress

In its Progress Report, Kentucky documented that sulfates, which are formed from SO<sub>2</sub> emissions, continue to be the biggest single contributor to regional haze for Class I areas in the Commonwealth and therefore focused its analysis on large SO<sub>2</sub> emissions from point sources. In addressing the requirements at 40 CFR 51.308(g)(5), Kentucky demonstrates that sulfate contributions to visibility impairment have decreased overall from 2000 to 2013<sup>15</sup> along with an improvement in visibility, and examines other potential pollutants of concern affecting visibility at Mammoth Cave. The Commonwealth presents data for the 20 percent worst days showing that ammonium sulfate is responsible for 79.6 and 67.8 percent of the regional haze at Mammoth Cave for the periods 2006–2010 and 2009–2013, respectively. For 2006–2010, primary organic matter is the next largest contributor at 9.3 percent whereas for 2009–2013, the next largest contributor to regional haze is ammonium nitrate at 13.9 percent, followed by primary organic matter at 11.7 percent. Furthermore, the Progress Report shows that the Commonwealth is on track to meeting its 2018 RPGs for Mammoth Cave and that SO<sub>2</sub> emissions reductions from 2002–2012 for EGUs in Kentucky have exceeded the projected reductions

from 2002–2018 in the regional haze plan.

EPA proposes to find that Kentucky has adequately addressed the provisions of 40 CFR 51.308(g) regarding an assessment of significant changes in anthropogenic emissions. EPA preliminarily agrees with Kentucky's conclusion that there have been no significant changes in emissions of visibility-impairing pollutants which have limited or impeded progress in reducing emissions and improving visibility in Class I areas impacted by the Commonwealth's sources.

#### 6. Assessment of Current Strategy

The Commonwealth believes that it is on track to meet the 2018 RPGs for Mammoth Cave and will not impede Class I areas outside of Kentucky from meeting their RPGs based on the trends in visibility and emissions presented in its Progress Report. Kentucky notes that the IMPROVE visibility readings for 2009–2013 already show greater improvements in visibility than projected by Kentucky in establishing the 2018 RPGs for Mammoth Cave and that SO<sub>2</sub> emissions from coal-fired EGUs in the Commonwealth have fallen from 2002 to 2012 by more than the predicted decline in SO<sub>2</sub> emissions from these sources for the first planning period in Kentucky's regional haze plan. Kentucky expects that these emissions will continue to decrease through the first regional haze implementation period. The Commonwealth identifies additional SO<sub>2</sub> reductions of 49,649 tpy from Kentucky EGUs that are retiring or converting to natural gas which were not accounted for in the original 2018 emissions projections in its regional haze plan.<sup>16</sup> Kentucky also provides data showing that SO<sub>2</sub> emissions from 2002 to 2012 from EGUs outside of the Commonwealth impacting visibility at Mammoth Cave have decreased by nearly 49 percent (65,416 tpy). In addition, the Commonwealth provides emissions data in Table 13 and in Figures 10 and 12 of its Progress Report showing a declining trend in SO<sub>2</sub> and NO<sub>x</sub> emissions from 2002 to 2012 for EGUs in Kentucky and the VISTAS states.

Kentucky also provides updated visibility analyses for Mammoth Cave

and the Class I areas outside the Commonwealth potentially impacted by sources in Kentucky (Great Smoky Mountains National Park in North Carolina and Tennessee, James River Face Wilderness Area and Shenandoah National Park in Virginia, Linville Gorge Wilderness Area in North Carolina, and Dolly Sods Wilderness Area in West Virginia), and notes that these analyses show that these areas are on track to achieve their RPGs by 2018.<sup>17</sup>

As discussed in Section II.A.1, above, CAIR was implemented during the time period evaluated by Kentucky for its Progress Report, but has now been replaced by CSAPR. At the present time, the requirements of CSAPR apply to sources in Kentucky under the terms of a FIP because Kentucky has not, to date, incorporated the CSAPR requirements into its SIP. Kentucky's regional haze plan accordingly does not contain sufficient provisions to ensure that the RPGs of Class I areas in nearby states will be achieved. The term "implementation plan," however, is defined for purposes of the Regional Haze Rule to mean "any [SIP], [FIP], or Tribal Implementation Plan." 40 CFR 51.301. Measures in any issued FIP, as well as those in a state's regional haze SIP, may therefore be considered in assessing the adequacy of the "existing implementation plan."

EPA proposes to find that Kentucky has adequately addressed the provisions of 40 CFR 51.308(g) regarding the strategy assessment. In its Progress Report, Kentucky described the improving visibility trends using data from the IMPROVE network and the downward emissions trends in key pollutants, with a focus on SO<sub>2</sub> emissions from EGUs in the Commonwealth. Kentucky determined that its regional haze plan is sufficient to meet the RPGs for its own Class I area and the Class I areas outside the Commonwealth potentially impacted by the emissions from Kentucky. EPA finds that Kentucky's conclusion regarding the sufficiency of its regional haze plan is appropriate because CAIR was in effect in Kentucky through 2014, providing the emission reductions relied upon in Kentucky's regional haze

<sup>15</sup> Kentucky Progress Report, Figures 21 and 22, p. 80.

<sup>16</sup> Kentucky Progress Report, Table 11, pp. 42–43.

<sup>17</sup> Kentucky Progress Report, Table 26, p. 87; Figures 23–32, pp. 82–86; Figures 14 and 15, pp. 69–70.



plan through that date. CSAPR is now being implemented, and by 2018, the end of the first regional haze implementation period, CSAPR will reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> from EGUs in Kentucky by the same amount assumed by EPA when it issued the FIP for the Commonwealth in June 2012 replacing reliance on CAIR with reliance on CSAPR. Because CSAPR will ensure the control of SO<sub>2</sub> and NO<sub>x</sub> emissions reductions relied upon by Kentucky and other states in setting their RPGs beginning in January 2015 at least through the remainder of the first implementation period in 2018, EPA is proposing to approve Kentucky's finding that the plan elements and strategies in its implementation plan are sufficient to achieve the RPGs for the Class I area in the Commonwealth and for Class I areas in nearby states potentially impacted by sources in the Commonwealth.

#### 7. Review of Current Monitoring Strategy

In its Progress Report, Kentucky summarizes the existing monitoring network in Kentucky to monitor visibility at Mammoth Cave and concludes that no modifications to the existing visibility monitoring strategy are necessary. The primary monitoring network for regional haze, both nationwide and in Kentucky, is the Interagency Monitoring of Protected Visual Environments (IMPROVE) network. There is currently one IMPROVE site located in Mammoth Cave National Park.

The Commonwealth also explains the importance of the IMPROVE monitoring network for tracking visibility trends at the Class I area in Kentucky. Kentucky states that data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the regional haze progress reports and SIP revisions, and thus, the monitoring data from the IMPROVE sites needs to be readily accessible and to be kept up to date. The Visibility Information Exchange Web System Web site has been maintained by VISTAS and the other Regional Planning Organizations to provide ready access to the IMPROVE data and data analysis tools.

In addition to the IMPROVE measurements, some ongoing long-term limited monitoring supported by Federal Land Managers provides additional insight into progress toward regional haze goals. Kentucky benefits from the data from these measurements, but is not responsible for associated funding decisions to maintain these measurements into the future.

In addition, KDAQ operates a PM<sub>2.5</sub> network of filter-based Federal reference method monitors and filter-based speciation monitors. These PM<sub>2.5</sub> measurements help the KDAQ characterize air pollution levels in areas across the Commonwealth, and therefore aid in the analysis of visibility improvement in and near Mammoth Cave.

EPA proposes to find that Kentucky has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding monitoring strategy because the Commonwealth reviewed its visibility monitoring strategy and determined that no further modifications to the strategy are necessary.

#### B. Determination of Adequacy of the Existing Regional Haze Plan

In its Progress Report, Kentucky submitted a negative declaration to EPA regarding the need for additional actions or emissions reductions in Kentucky beyond those already in place and those to be implemented by 2018 according to Kentucky's regional haze plan. Kentucky determined that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the Commonwealth's sources. The Commonwealth's negative declaration is based on the findings from the Progress Report, including the findings that: visibility has already improved at Mammoth Cave in Kentucky such that monitored 2009–2013 visibility readings show that the Class I area has already met its RPGs for 2018; actual SO<sub>2</sub> emissions reductions from coal-fired EGUs in Kentucky exceed the predicted reductions in Kentucky's regional haze plan; additional EGU control measures not relied upon in the Commonwealth's regional haze plan have occurred or will occur during the first implementation period that will further reduce SO<sub>2</sub> emissions; and emissions of SO<sub>2</sub> from EGUs in Kentucky and the surrounding VISTAS states are expected to continue to trend downward.

EPA proposes to conclude that Kentucky has adequately addressed 40 CFR 51.308(h) because the visibility trends at Mammoth Cave and at Class I areas outside of the Commonwealth potentially impacted by sources within Kentucky and the emissions trends of the largest emitters of visibility-impairing pollutants in the Commonwealth indicate that the relevant RPGs will be met.

### III. Proposed Action

EPA is proposing to approve Kentucky's September 17, 2014, Regional Haze Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 25, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017-16484 Filed 8-4-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2012-0360; FRL-9965-18-OAR]

**RIN 2060-AT48**

### National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations (OSWRO). The proposed amendments address an issue related to monitoring pressure relief devices (PRDs) on containers. This issue was raised in a petition for reconsideration of the amendments to the OSWRO NESHAP finalized in 2015 based on the residual risk and technology review (RTR). Among other things, the 2015 amendments established additional monitoring requirements for all PRDs, including PRDs on containers. For PRDs on containers, these monitoring requirements were in addition to the inspection and monitoring requirements for containers and their closure devices, which include PRDs that were already required by the OSWRO NESHAP. This proposed action would remove the

additional monitoring requirements for PRDs on containers that resulted from the 2015 amendments because we have determined that they are not necessary. This action, if finalized as proposed, would not substantially change the level of environmental protection provided under the OSWRO NESHAP. The proposed amendments would reduce capital costs related to compliance to this industry by \$28 million compared to the current rule. Total annualized costs, at an interest rate of 7 percent, would be reduced by \$4.2 million per year. These costs are associated with a present value of \$39 million dollars, discounted at 7 percent over 15 years.

**DATES:** *Comments.* Comments must be received on or before September 21, 2017.

*Public Hearing.* If a public hearing is requested by August 14, 2017, then we will hold a public hearing on August 22, 2017 at the location described in the **ADDRESSES** section. The last day to pre-register in advance to speak at the public hearing will be August 21, 2017.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0360 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <http://www.regulations.gov>. The U.S. Environmental Protection Agency (EPA) may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

*Public Hearing.* If a public hearing is requested, it will be held at EPA Headquarters, William Jefferson Clinton East Building, 1201 Constitution Avenue NW., Washington, DC 20004. If a public hearing is requested, then we will provide details about the public hearing on our Web site at: [https://www.epa.gov/stationary-sources-air-](https://www.epa.gov/stationary-sources-air)

*pollution/site-waste-and-recovery-operations-oswro-national-emission.*

The EPA does not intend to publish another document in the **Federal Register** announcing any updates on the request for a public hearing. Please contact Ms. Virginia Hunt at (919) 541-0832 or by email at [hunt.virginia@epa.gov](mailto:hunt.virginia@epa.gov) to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, please contact Ms. Angie Carey, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2187; fax number: (919) 541-0246; email address: [carey.angela@epa.gov](mailto:carey.angela@epa.gov). For information about the applicability of the NESHAP to a particular entity, contact Ms. Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, Mail Code 2227A, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564-7042; fax number: (202) 564-0050; and email address: [mia.marcia@epa.gov](mailto:mia.marcia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2012-0360. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0360. The EPA's policy is that all comments received will be included in the public docket without change and will be made available online at <http://www.regulations.gov>, including any

personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2012-0360. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in the Code of Federal Regulations (CFR) at 40 CFR part 2.

The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any electronic storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>.

**Preamble Acronyms and Abbreviations.** Multiple acronyms and terms are used in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for

reference purposes, the EPA defines the following terms and acronyms here:

ACC American Chemistry Council  
 CAA Clean Air Act  
 CBI Confidential Business Information  
 CFR Code of Federal Regulations  
 DOT Department of Transportation  
 EPA Environmental Protection Agency  
 ETC Environmental Technology Council  
 FR Federal Register  
 HAP Hazardous air pollutants  
 MACT Maximum achievable control technology  
 NESHAP National emissions standards for hazardous air pollutants  
 OAQPS Office of Air Quality Planning and Standards  
 OMB Office of Management and Budget  
 OSWRO Off-site waste and recovery operations  
 PRD Pressure relief device  
 RCRA Resource Conservation and Recovery Act  
 RTR Residual risk and technology review  
 TSDF Treatment, storage and disposal facilities

**Organization of this Document.** The information in this preamble is organized as follows:

- I. General Information
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- II. Background
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  - A. What are the affected sources?
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  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act (NTTAA)
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. General Information

### A. What is the source of authority for the reconsideration action?

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7412 and 7607(d)(7)(B)).

### B. Does this action apply to me?

Categories and entities potentially regulated by this action include, but are not limited to, businesses or government agencies that operate any of the following: Hazardous waste treatment, treatment storage and disposal facilities (TSDF); Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities; nonhazardous wastewater treatment facilities other than publicly-owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; and used oil refineries.

To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.680 of subpart DD. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

### C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet. A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2012-0360). Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/site-waste-and-recovery-operations-oswro-national-emission>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposed action at this same Web site. Other key technical documents related to this proposal will be available in the docket when the **Federal Register** version of the proposal is posted to the docket. Only the version as published in the **Federal Register** will represent the official EPA proposal.

## II. Background

On March 18, 2015, the EPA promulgated a final rule amending the OSWRO NESHAP based on the RTR conducted for the OSWRO source category (80 FR 14248). In that final

rule, the EPA amended the OSWRO NESHAP to revise provisions related to emissions during periods of startup, shutdown, and malfunction; to add requirements for electronic reporting of performance testing; to add monitoring requirements for PRDs; to revise routine maintenance provisions; to clarify provisions for open-ended valves and lines and for some performance test methods and procedures; and to make several minor clarifications and corrections. After publication of the final rule, the EPA received a petition for reconsideration submitted jointly by Eastman Chemical Company and the American Chemical Council (ACC) (dated May 18, 2015). This petition sought reconsideration of two of the amended provisions of the OSWRO NESHAP: (1) The equipment leak provisions for connectors, and (2) the requirement to monitor PRDs on containers. The EPA considered the petition and supporting information along with information contained in the OSWRO NESHAP amendment rulemaking docket (Docket ID No. EPA-HQ-OAR-2012-0360) in reaching a decision on the petition. The Agency granted reconsideration of the PRD monitoring requirement in letters to the petitioners dated February 8, 2016. In separate letters to the petitioners dated May 5, 2016, the Administrator denied reconsideration of the equipment leak provisions for connectors and explained the reasons for the denial in these letters. These letters are available in the OSWRO NESHAP amendment rulemaking docket. The EPA also published a **Federal Register** notice on May 16, 2016 (81 FR 30182), informing the public of these responses to the petition. On May 18, 2015, ACC filed a petition for judicial review of the OSWRO NESHAP RTR<sup>1</sup> challenging numerous provisions in the final rule, including the issues identified in the petition for administrative reconsideration. In 2016, the EPA and ACC reached an agreement to resolve that case. Specifically, the parties agreed to a settlement under which ACC agrees to dismiss its petition for review of the 2015 final rule if the EPA completes its reconsideration of certain PRD provisions in accordance with an agreed-upon schedule.<sup>2</sup>

<sup>1</sup> United States Court of Appeals for the District of Columbia Circuit, Case Number 15-1146. Eastman Chemical Company also filed a petition for judicial review of the OSWRO NESHAP RTR, but sought and was granted voluntary dismissal in September 2016.

<sup>2</sup> In accordance with section 113(g) of the CAA (42 U.S.C. 7413(g)), the EPA provided notice and the opportunity for comment on the settlement by publishing a notice in the **Federal Register** on

As a result of our reconsideration, the Agency is proposing revised monitoring requirements for PRDs on containers. The EPA is requesting public comments on these proposed revisions.

### III. Proposed Revisions to PRD Requirements

In October 2016, two industry trade groups, ACC and the Environmental Technology Council (ETC), gathered and provided the EPA with data related to stationary process PRDs and PRDs on containers for 19 facilities owned by eight companies. The provided data cover calendar years 2013–2015 and include general PRD information, such as the number of PRDs at the facility, the PRDs' set pressure, and the type of equipment the PRDs are on (*i.e.*, stationary equipment or containers). For containers, additional information was provided, including the type and size of the container and the average length of time the containers are onsite before they are emptied. The data also include PRD release information, such as the number of release events that occurred from 2013–2015 and the quantity of emissions from each release event. The companies also identified methods employed to monitor PRD releases, to prevent and control PRD releases, and the perceived effectiveness of these methods. Other data were also provided about the costs to control PRD releases, the impact of force majeure events on PRD releases, types of root cause analyses conducted after a PRD release occurs, PRD inspection frequency, and existing regulations that currently apply to PRDs at OSWRO facilities. The data provided to the EPA by ACC and ETC are available in the docket for this action.

The March 18, 2015, final amendments to the OSWRO NESHAP include requirements for facilities to monitor PRDs, and since the rule does not distinguish between PRDs on stationary process equipment and those on containers, the monitoring requirements apply to all PRDs. The rule requires a monitoring system capable of: (1) Identifying a pressure release, (2) recording the time and duration of each pressure release, and (3) immediately notifying operators that a pressure release is occurring. Containers used in OSWRO operations include small containers, such as pressurized cylinders and 55-gallon drums, and large containers, such as railcars and over-the-road tanker vehicles. The petition for reconsideration identified concerns

December 19, 2016 (81 FR 91931). The settlement agreement was finalized on June 15, 2017.

regarding the monitoring requirements as they pertain to PRDs on containers and stated that, because containers are frequently moved around the facility and are received from many different off-site locations, it would be difficult, if not impossible, to design and implement a monitoring system for containers that would meet the 2015 rule requirements.

In reevaluating the PRD monitoring requirements in the 2015 rule as they pertain to containers, we considered what other requirements pertain to these containers and the PRDs on them and the data submitted by ACC and ETC. First, we reviewed the OSWRO NESHAP requirements for containers at 40 CFR 63.688. Depending on the size of the container, the vapor pressure of the container contents, and how the container is used (*i.e.*, for temporary storage and/or transport of the material versus waste stabilization), the rule requires the OSWRO owners and operators to follow the requirements for either Container Level 1, 2, or 3 control requirements as specified in the Container NESHAP at 40 CFR part 63, subpart PP. Each control level specifies requirements to ensure the integrity of the container and its ability to contain its contents (*e.g.*, requirements to meet U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation, or vapor tightness as determined by EPA Method 21, or no detectable leaks as determined by EPA Method 27); requirements for covers and closure devices (which include pressure relief valves as that term is defined in the Container NESHAP at 40 CFR 63.921); and inspection and monitoring requirements for containers and their covers and closure devices pursuant to the Container NESHAP at 40 CFR 63.926. The inspection and monitoring requirements for containers at 40 CFR 63.926, which are already incorporated into the OSWRO NESHAP by 40 CFR 63.688, require that unless the container is emptied within 24 hours of its receipt at the OSWRO facility, the OSWRO owner/operator is required on or before they sign the shipping manifest accepting a container to visually inspect the container and its cover and closure devices (which include PRDs). If a defect of the container, cover, or closure device is identified, the Container NESHAP specify the time period within which the container must be either emptied or repaired. The Container NESHAP require subsequent annual inspection of the container, its cover, and closure devices in the case where a container remains at the facility and has

been unopened for a period of 1 year or more. Therefore, the PRD continuous monitoring requirements in the 2015 OSWRO NESHAP at 40 CFR 63.691(c)(3)(i) are in addition to PRD monitoring requirements (as closure devices) already in the OSWRO NESHAP per the Container requirements at 40 CFR 63.688, which incorporate the inspection and monitoring requirements of the subpart PP Container NESHAP. In addition, nearly all OSWRO containers are subject to DOT regulatory requirements to ensure their safe design, construction, and operation while in transport. The DOT regulations at 49 CFR part 178, Specifications for Packagings or 49 CFR part 179, Specifications for Tank Cars, prescribe specific design, manufacturing, and testing requirements for containers that will be transported by motor vehicles. In addition, 49 CFR part 180, Continuing Qualification and Maintenance of Packagings, requires periodic inspections, testing, and repair of containers, which would minimize the chance of an atmospheric release from a PRD.

Second, we reviewed the dataset provided by ACC and ETC for PRDs on containers includes information for 19 facilities. The types of containers identified in this dataset include pressurized cylinders, drums, tote-tanks, cargo tanks, isotainers, railcars, and tank vehicles, and the containers with PRDs onsite at any one time can be zero or several hundred. The data from ACC and ETC show that containers with PRDs can range in size from a few hundred gallons to up to 25,000 gallons for rail cars, with set pressures (*i.e.*, the pressure at which the PRD is designed to open to relieve excess pressure in the container) varying between 2.5 and 100 pounds per square inch. For OSWRO, the information the EPA reviewed shows that containers remain onsite until the contents can be unloaded, which can vary depending on the operational activities at the facility, and based on the data provided by ACC and ETC, is generally less than 2 weeks. In addition, the data reviewed by the EPA indicate that OSWRO containers are constantly changing (*i.e.*, moving in and out of inventory), and they are frequently moved around the site, depending on storage area capacity and the queue for offloading. Due to the transitory nature of these containers, it would be difficult to design and implement a system to monitor each individual container PRD. These facilities had an annual average of 229 containers with PRDs at the facility site for some period of time during the year.

The 3 years of data we received show that there was only one PRD on a container that had an emissions release event. The relief event that occurred was while nitrogen pressure was being applied to a tank truck to off-load waste material. The leak resulted in approximately 40 pounds of volatile organic compounds, of which about 0.4 pounds was an OSWRO NESHAP Table 1, hazardous air pollutant (HAP), over a duration of about 8.5 hours.

Besides this one PRD release event, no other facilities reported a PRD release in the data provided to the EPA. The one reported release was due to pressure being applied to the tank during material off-loading. No facility reported releases that occurred during storage or transport of the container within the facility. All of these facilities are subject to the subpart PP Container NESHAP inspection requirements, as described above, and did not report detecting any PRD releases or defective conditions during these inspections. An open or defective PRD would be detected by the subpart PP inspection requirements. The EPA's understanding, based substantially on its review of the data provided by ACC and ETC, is that PRD releases from containers are rare, the emissions potential from PRDs on these containers is low, and the additional monitoring requirements for PRDs on the containers that would be required under the 2015 OSWRO NESHAP would be difficult. In addition, the costs for the continuous monitoring requirements in the 2015 rule for PRDs on containers would be very high relative to the low emissions potential. See section IV.C of this preamble for a discussion on the projected costs for a facility to comply with the PRD continuous monitoring requirements on containers in the 2015 OSWRO NESHAP.

Based on the above considerations, we have determined that the PRD inspection and monitoring requirements in the Container NESHAP that are already incorporated into the container requirements of the OSWRO NESHAP are effective and sufficient given the high cost and difficulty of conducting continuous monitoring as contemplated by 40 CFR 63.691(c)(3)(i) and the low emissions potential from containers at OSWRO facilities. Therefore, we are proposing that PRDs on OSWRO containers will not be subject to the monitoring requirements at 40 CFR 63.691(c)(3)(i), and we are soliciting comment on our assessment and proposal regarding these PRD monitoring requirements.

The EPA is also soliciting comment on whether to impose more frequent

inspections for any filled or partially-filled OSWRO container that remains onsite longer than 60 days. Although the data reviewed show that typically most containers are onsite for less than 2 weeks, there may be instances when, due to facility operations, containers remain onsite and filled or partially-filled for a longer period of time. The EPA is soliciting comment on whether a container that remains onsite for a longer period of time should be required to be visually inspected at a set time, and on an established timeframe thereafter, as long as it remains filled, or partially-filled and onsite. Additionally, the EPA is accepting comment on whether any additional inspection requirements should apply to all containers or only apply to larger containers. Finally, the EPA is also accepting comment on whether to also incorporate the RCRA subpart BB (Air Emission Standards for Equipment Leaks) and subpart CC (Air Emission Standards for Tanks, Surface Impoundments, and Containers) of 40 CFR part 264 and 265 inspection requirements for RCRA permitted and interim status facilities, as these weekly inspections could help facilities identify leaking and/or deteriorating containers or cover and closure devices and could help identify any PRD leaks. If the EPA incorporates additional inspection or monitoring requirements as outlined above, we are also soliciting comment on whether to require associated recordkeeping and reporting obligations.

We are not proposing any other amendments to the OSWRO NESHAP as it pertains to PRDs on containers. Specifically, we are not proposing to alter the requirement that PRDs on containers not release HAP emissions directly to the atmosphere. If a PRD release occurs as a result of a defect of the container, cover, or closure device (which includes PRDs), the owner or operator would be subject to the requirements in the Container NESHAP at 40 CFR 63.926(a)(3), as referenced from the OSWRO NESHAP at 63.688, that require emptying of the container or repair within a specified time period. Further, if a PRD fails to re-seat itself, this would also likely be considered a defect in the PRD and, therefore, would be subject to the same requirements in the Container NESHAP at 63.926(a)(3).

We are also not proposing any changes to the requirements for owners and operators to quantify the amount of Table 1 HAP emissions associated with a release from a PRD as those requirements at 40 CFR 63.691(c)(3)(ii) apply to PRDs on containers or to the requirements to report such releases at 63.697(b)(5). We are not proposing

changes to these requirements since they allow calculations based on process knowledge, and do not require that calculations be based on monitoring conducted pursuant at 63.691(c)(3)(i).

#### IV. Summary of Cost, Environmental, and Economic Impacts

##### A. What are the affected sources?

We estimate that 49 existing sources would be affected by the revised monitoring requirements being proposed in this action.

##### B. What are the air quality impacts?

We are proposing revised requirements for PRD monitoring on containers on the basis that the inspection and monitoring requirements in 40 CFR part 63, subpart PP incorporated into the OSWRO NESHAP are sufficient. We project that the proposed standard would not result in any change in emissions compared to the existing OSWRO NESHAP.

##### C. What are the cost impacts?

When the OSWRO NESHAP were finalized in 2015, the EPA was not aware of equipment meeting the

definition of a PRD on containers in the OSWRO industry, and costs associated with the PRD release event prohibition and monitoring requirements were not estimated for this equipment. Therefore, the capital and annualized costs in the 2015 final rule were underestimated, as these costs were not included. To determine the impacts of the 2015 final rule, considering the monitoring requirements for PRDs on containers based on the data now available to the EPA from ACC and ETC, we have estimated the costs and the potential emission reductions associated with wireless PRD monitors for containers. Using vendor estimates for wireless PRD monitor costs, we estimate that the capital costs per facility with the average number of containers with PRDs would be approximately \$570,000, and the capital costs for the industry (49 facilities) would be approximately \$28 million. The total annualized costs per facility (assuming a 15-year equipment life and a 7-percent interest rate) are estimated to be approximately \$85,000 and approximately \$4.2 million for the industry. Therefore, by removing the requirement to monitor PRDs on

containers, we estimate the impact of our proposal to be an annual reduction of \$4.2 million. Cost information, including wireless PRD monitor costs, is available in the docket for this action.

##### D. What are the economic impacts?

We performed a national economic impact analysis for the 49 OSWRO facilities affected by this proposed rule. The updated national costs under this reconsideration, accounting for the data provided by ACC and the ETC, are \$1.3 million in capital costs in 2018, or \$200,000 in total annualized costs under a 7-percent interest rate (\$170,000 million in total annualized costs under a 3-percent interest rate).<sup>3</sup> After updating the baseline costs of the PRD monitoring requirements as written in the 2015 rule, in consideration of the data provided by ACC and the ETC, this reconsideration constitutes a \$28 million reduction in the capital cost or a \$4.2 million reduction in annualized costs assuming an interest rate of 7-percent (\$3.4 million reduction in annualized costs assuming an interest rate of 3-percent). These costs can be seen in Table 1.

TABLE 1—RE-ESTIMATED COST AND RECONSIDERATION COST

[\$2016, millions]

	Capital costs	Total annualized costs	
		7%	3%
Re-estimated Cost (New Baseline) .....	29	4.4	3.6
Reconsidered Cost .....	1.3	0.20	0.17
Burden Reduction .....	– 28	– 4.2	– 3.4

**Note:** Estimates rounded to 2 significant figures. Totals may not sum due to rounding.

In terms of the present value of the costs, the reconsidered requirements compared to the re-estimated costs of the promulgated rule (the new baseline) constitute a decrease of \$39 million

under a 7-percent discount rate (\$42 million under a 3-percent discount rate). In terms of the equivalent annualized values, this reconsideration constitutes \$4.3 million dollars annually at a 7-

percent discount rate (\$3.5 million annually at a 3-percent discount rate) in reduced compliance costs compared to the new baseline estimation.<sup>4</sup> These values can be seen in Table 2, below.

TABLE 2—RE-ESTIMATED PRD PROMULGATED COST AND RECONSIDERATION COST

[\$2016, millions]

	Re-estimated cost (new baseline)		Reconsidered cost		Burden reduction	
	7%	3%	7%	3%	7%	3%
Present Value .....	\$41	\$44	\$1.9	\$2.0	– \$39	– \$42
Equivalent Annualized Value .....	4.5	3.7	0.20	0.17	– 4.3	– 3.5

**Note:** These values are estimated over 15 years. Totals may not sum due to rounding.

More information and details of this analysis, including the conclusions stated above, are provided in the

technical document, “Economic Impact Analysis for the Proposed Reconsideration of the 2015 NESHAP:

Off-Site Waste and Recovery Operations,” which is available in the rulemaking docket.

<sup>3</sup> We assume affected facilities will start incurring costs in 2018, after the final rule is finalized.

<sup>4</sup> The equivalent annualized value represents the even flow of the present value of costs over the technical life of the monitors.

#### *E. What are the benefits?*

We project that the proposed standard would not result in any change in emissions compared to the existing OSWRO NESHAP.

#### *V. Statutory and Executive Order Reviews*

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 63, subpart DD under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 1717-11. The proposed amendments removed monitoring requirements for PRDs on containers, and these proposed amendments do not affect the estimated information collection burden of the existing rule. You can find a copy of the Information Collection Request in the docket at Docket ID No. EPA-HQ-OAR-2012-0360 for this rule.

#### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This rule relieves regulatory burden by reducing compliance costs associated with monitoring PRDs on containers. The Agency has determined that of the 28 firms that own the 49 facilities in the OSWRO source category, two firms, or 7 percent, can be classified as small firms. The cost to sales ratio of the reconsidered cost of the monitoring requirements for these two firms is significantly less than 1 percent. In addition, this action constitutes a

burden reduction compared to the re-estimated costs of the 2015 rule as promulgated. We have, therefore, concluded that this action does not have a significant impact on a substantial number of small entities. For more information, see the “Economic Impact Analysis for the Proposed Reconsideration of the 2015 NESHAP: Off-Site Waste and Recovery Operations,” which is available in the rulemaking docket.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, tribal governments, or the private sector.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The EPA’s risk assessments for the 2015 final rule (Docket ID No. EPA-HQ-OAR-2012-0360) demonstrate that the current regulations are associated with an acceptable level of risk and provide an ample margin of safety to protect public health and prevent adverse environmental effects. This

proposed action would not alter those conclusions.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

#### *J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

In the 2015 final rule, the EPA determined that the current health risks posed by emissions from this source category are acceptable and provide an ample margin of safety to protect public health and prevent adverse environmental effects. To gain a better understanding of the source category and near source populations, the EPA conducted a proximity analysis for OSWRO facilities prior to proposal in 2014 to identify any overrepresentation of minority, low income, or indigenous populations. This analysis gave an indication of the prevalence of sub-populations that might be exposed to air pollution from the sources. We revised this analysis to include four additional OSWRO facilities that the EPA learned about after proposal for the 2015 rule. The EPA determined that the final rule would not have disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations. The revised proximity analysis results and the details concerning its development are presented in the memorandum titled, *Updated Environmental Justice Review: Off-Site Waste and Recovery Operations RTR*, available in the docket for this action (Docket Document ID No. EPA-HQ-OAR-2012-0360-0109). This proposed action would not alter the conclusions made in the 2015 final rule regarding this analysis.

#### **List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous



substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 27, 2017.

**E. Scott Pruitt,**  
*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

- 1. The authority citation for part 63 continues to read as follows:

*Authority:* 42 U.S.C. 7401, *et seq.*

### **Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations**

- 2. Section 63.691 is amended by revising paragraph (c)(3) introductory text to read as follows:

#### **§ 63.691 Standards: Equipment leaks.**

\* \* \* \* \*

(c) \* \* \*

(3) *Pressure release management.*

Except as provided in paragraph (c)(4) of this section, emissions of HAP listed in Table 1 of this subpart may not be discharged directly to the atmosphere from pressure relief devices in off-site material service, and according to the date an affected source commenced construction or reconstruction and the date an affected source receives off-site material for the first time, as established in § 63.680(e)(i) through (iii), the owner or operator must comply with the requirements specified in paragraphs (c)(3)(i) and (ii) of this section for all pressure relief devices in off-site material service, except that containers are not subject to the obligations in (c)(3)(i) of this section.

\* \* \* \* \*

[FR Doc. 2017–16494 Filed 8–4–17; 8:45 a.m.]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Part 389**

[Docket No. FMCSA–2016–0341]

**RIN 2126–AB96**

### **Rulemaking Procedures Update**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes to amend its rulemaking procedures by revising the process for preparing and adopting rules, petitions, and direct final rules. Also, the Agency adds new definitions, and makes general administrative corrections throughout its rulemaking procedures. These proposed actions are authorized under the Fixing America's Surface Transportation (FAST) Act and the Administrative Procedure Act (APA).

**DATES:** Comments on this document must be received on or before October 6, 2017.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2016–0341 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bivan R. Patnaik, Chief, Regulatory Development Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at 202–366–8092 or [Bivan.Patnaik@dot.gov](mailto:Bivan.Patnaik@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** This NPRM is organized as follows:

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act
  - D. Waiver of Advance Notice of Proposed Rulemaking
- II. Legal Basis for the Rulemaking
- III. Discussion of Proposed Rulemaking
- IV. International Impacts
- V. Section-by-Section Analysis
- VI. Regulatory Analyses
  - A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and

Procedures as Supplemented by E.O. 13563)

- B. Regulatory Flexibility Act (Small Entities)
- C. Assistance for Small Entities
- D. Unfunded Mandates Reform Act of 1995
- E. Paperwork Reduction Act (Collection of Information)
- F. E.O. 13132 (Federalism)
- G. E.O. 12988 (Civil Justice Reform)
- H. E.O. 13045 (Protection of Children)
- I. E.O. 12630 (Taking of Private Property)
- J. Privacy
- K. E.O. 12372 (Intergovernmental Review)
- L. E.O. 13211 (Energy Supply, Distribution, or Use)
- M. E.O. 13175 (Indian Tribal Governments)
- N. National Technology Transfer and Advancement Act (Technical Standards)
- O. Environment (NEPA, CAA, Environmental Justice)

## **I. Public Participation and Request for Comments**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2016–0341), indicate the specific section of this document to which each section of your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA–2016–0341, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.



### B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA–2016–0341, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

### D. Waiver of Advance Notice of Proposed Rulemaking

Under section 5202 of the FAST Act (Pub. L. 114–94, 129 Stat. 1312, 1534, December 4, 2015; 49 U.S.C. 31136(g)), if a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, unless the Agency finds good cause that both would be impracticable, unnecessary, or contrary to the public interest. As today’s NPRM is not proposing any requirements regarding commercial motor vehicle safety and would not lead to promulgation of a major rule, FMCSA finds that publication of an ANPRM or proceeding with a negotiated rulemaking are unnecessary and contrary to the public interest in this case.

## II. Legal Basis for the Rulemaking

The FAST Act requires FMCSA to address its rulemaking and petitions procedures. Specifically, section 5202 provides requirements for the Agency to follow regarding the development of proposed rulemakings [49 U.S.C. 31136(f)–(h)]. Section 5204 also directs the Agency to be more transparent to the public regarding how FMCSA prioritizes and defines petitions.

The APA (5 U.S.C. 551–706) established procedures for all Federal

agencies to use in developing rules and regulations. It also established the standards that allow the public to participate in a rulemaking as well as the opportunity to petition the Federal government for the issuance, amendment, or repeal of a rule. The APA authorizes those proposed changes to Part 389, beyond what is required by the FAST Act.

## III. Discussion of Proposed Rulemaking

FMCSA proposes several changes to the regulatory procedural requirements found in 49 CFR part 389. These changes fall into the three general categories outlined below, and are explained in further detail in the section-by-section analysis.

### A. Advance Rulemaking Procedures Required

FMCSA proposes new rulemaking provisions required by the FAST Act where the Agency must consider undertaking a negotiated rulemaking or an ANPRM for all major rules regarding commercial motor vehicle safety. However, the FAST Act allows the Administrator to waive this requirement in instances where those tools would be impracticable, unnecessary, or contrary to the public interest. Additionally, the NPRM proposes a definition of a “major rule” as defined in the Congressional Review Act (5 U.S.C. 801). FMCSA would use this definition to determine whether an ANPRM or negotiated rulemaking process is necessary.

### B. Definition and Processing of a Petition

Under the current FMSA regulations (49 CFR part 389) for submitting petitions, there is no regulatory definition of a petition. However, section 5204 of the FAST Act clearly defines the term “petition.” It includes requests for: A new regulation; a regulatory interpretation or clarification; or a determination by FMCSA that a regulation should be modified or eliminated for one of several enumerated reasons prescribed in section 5204. FMCSA proposes to include this definition in part 389.

Additionally, under this proposal, part 389 would be revised to include a new process for filing and addressing petitions. These changes are being proposed in order to clarify FMCSA’s procedures for rulemaking, and to make editorial changes.

Finally, FMCSA proposes to define what “written or in writing” means to include electronic documentation.

### C. Direct Final Rulemaking Procedures

Under FMCSA’s current direct final rulemaking (DFR) procedures, if the Agency receives a notice of intent (NOI) to file an adverse comment, the DFR will be withdrawn, even if the comment that is eventually filed does not meet the definition of an adverse comment found in 49 CFR 389.39(b). FMCSA proposes to change this requirement. Upon receiving an NOI to file an adverse comment, the Agency would extend the comment period rather than withdraw the DFR, allowing the commenter additional time to file. Once FMCSA receives the comment, the Agency would determine whether it is adverse. If it is an adverse comment, FMCSA would withdraw the DFR; however, if it does not meet the definition in § 389.39(b), the Agency would move forward with the DFR. If the same or another commenter submits an NOI at the end of the extended comment period, FMCSA will determine, on a case-by-case basis, whether to extend the comment period again, withdraw the DFR, or proceed with the DFR using only the comments already received.

## IV. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

## V. Section-by-Section Analysis

Throughout part 389, FMCSA would change the term “rule making” to “rulemaking” for consistency.

### Section 389.3 Definitions

FMCSA would add new definitions of “major rule,” “petitions,” and “written or in writing” to § 389.3.

### Section 389.13 Initiation of Rulemaking

In § 389.13, FMCSA would redesignate the existing text into paragraph (a) and would add paragraphs (b)(1) through (b)(3).

Proposed paragraph (b) of section 389.13 and its subparagraphs include the advanced public participation requirements from section 5202 of the FAST Act.

### *Section 389.15 Contents of Notices of Proposed Rulemaking*

The title of § 389.15 is changed by removing the space between “rule” and “making.”

### *Section 389.21 Submission of Written Comments*

FMCSA proposes revising § 389.21 to include direction on how comments should be submitted. The Agency would remove the text regarding incorporation by reference, as it is not relevant to the topic of comment submission. FMCSA also proposes renaming the section heading to “Submission of written comments” to reflect this change.

### *Section 389.29 Adoption of Final Rules*

In § 389.29, FMCSA makes minor changes to the text to clarify the procedure followed when the Agency finalizes a rule.

### *Section 389.31 Petitions for Rulemaking*

In § 389.31(a) the word “repeal” would be replaced with “withdraw” to more accurately describe the removal of a regulation. In paragraph (b)(1) the word “duplicate” would be replaced with “writing” to make use of and follow the definition of this term, proposed in § 389.3. This proposed change would also reflect that the Agency no longer requires duplicate submissions.

### *Section 389.39 Direct Final Rulemaking Procedures*

In § 389.39, FMCSA would remove language regarding the withdrawal of a DFR if the Agency receives an NOI to submit an adverse comment. Upon receipt of an NOI, the Agency would extend the comment period to give the submitter additional time to file the comment. Once submitted, the comment would be reviewed to determine if it is an adverse comment, and proceed according to the results of that analysis (either to withdraw the DFR if the comment is adverse, or to move forward with the DFR if it is not).

## **VI. Regulatory Analyses**

### *A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)*

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies

and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is procedural in nature, primarily impacting FMCSA’s process for promulgation of regulations. As a result, there would be no costs associated with this NPRM.

### *B. Regulatory Flexibility Act (Small Entities)*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.<sup>1</sup> Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA does not expect this NPRM to have a significant economic impact on a substantial number of small entities. Consequently, I certify that the action would not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

### *C. Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this NPRM so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the NPRM will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Mr. Bivan Patnaik, listed in the **FOR FURTHER INFORMATION CONTACT** section of this NPRM.

<sup>1</sup> Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at <http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html>.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

### *D. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. As the proposed rule is procedural in nature and is not expected to result in any costs at the societal level, it would likewise not impose costs to State, local, or tribal governments.

### *E. Paperwork Reduction Act (Collection of Information)*

This NPRM calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *F. E.O. 13132 (Federalism)*

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this NPRM would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this NPRM does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

*G. E.O. 12988 (Civil Justice Reform)*

This NPRM meets applicable standards in sections 3(a) and 3(b) (2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*H. E.O. 13045 (Protection of Children)*

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. The Agency determined this NPRM is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action would in any respect present an environmental or safety risk that could disproportionately affect children.

*I. E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this NPRM in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

*J. Privacy*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This NPRM does not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this NPRM. As a result, FMCSA has not conducted a privacy impact assessment.

*K. E.O. 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this NPRM.

*L. E.O. 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this NPRM under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*M. E.O. 13175 (Indian Tribal Governments)*

This NPRM does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*N. National Technology Transfer and Advancement Act (Technical Standards)*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This NPRM does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

*O. Environment (NEPA, CAA, Environmental Justice)*

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.x. The Categorical Exclusion (CE) in paragraph 6.x. addresses regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.). The content in this rule is covered by this CE and the proposed action would not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: <http://www.regulations.gov>.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA’s general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

**List of Subjects in 49 CFR Part 389**

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 389 to read as follows:

**PART 389—RULEMAKING  
PROCEDURES—FEDERAL MOTOR  
CARRIER SAFETY REGULATIONS**

■ 1. The authority citation for part 389 is revised to read as follows:

**Authority:** Authority: 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114–94, 129 Stat. 1312, 1536, 42 U.S.C. 4917; and 49 CFR 1.87.

■ 2. Amend § 389.3 by adding definitions of *Major rule*, *Petition*, and *Written or in writing* in alphabetical order to read as follows:

**§ 389.3 Definitions.**

\* \* \* \* \*

*Major rule* means:

(1) Any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in:

- (i) An annual effect on the economy of \$100,000,000 or more;
- (ii) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (iii) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(2) The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

*Petition* means a request for:

- (1) A new regulation;
- (2) A regulatory interpretation or clarification; or
- (3) A determination made by the Administrator that a regulation should be modified or eliminated because it is:
  - (i) No longer:
    - (A) Consistent and clear;
    - (B) Current with the operational realities of the motor carrier industry; or
    - (C) Uniformly enforced.
  - (ii) Ineffective; or
  - (iii) Overly burdensome.

*Written or in writing* means printed, handwritten, typewritten either on paper or other tangible medium, or by any method of electronic documentation such as electronic mail.

**§ 389.7 [Amended]**

■ 3. Amend § 389.7 by removing the term “rule making” and add the term “rulemaking” in its place.

■ 4. Revise § 389.13 to read as follows:

**§ 389.13 Initiation of rulemaking**

(a) The Administrator initiates rulemaking on his/her own motion. However, in so doing, he/she may, in his/her discretion, consider the recommendations of his/her staff or other agencies of the United States or of other interested persons.

(b) If a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, the Administrator, before publishing such proposed rule, shall—

- (1) Issue an advance notice of proposed rulemaking that:
  - (i) Identifies the need for a potential regulatory action;
  - (ii) Identifies and requests public comment on the best available science or technical information relevant to analyzing potential regulatory alternatives;

(iii) Requests public comment on the available data and costs with respect to regulatory alternatives reasonably likely to be considered as part of the rulemaking; and

- (iv) Requests public comment on available alternatives to regulation; or
- (2) Proceed with a negotiated rulemaking.

(3) This paragraph does not apply to a proposed rule if the Administrator, for good cause, finds (and incorporates the finding and a brief statement of reasons for such finding in the proposed or final rule) that an advance notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest.

**§ 389.15 [Amended]**

■ 5. In § 389.15, paragraph (a), remove the term “rule making” and add the term “rulemaking” in its place.

■ 6. Revise § 389.21 to read as follows:

**§ 389.21 Submission of written comments.**

(a) You may submit comments identified by the docket number provided in the rulemaking document using any of the following methods. To avoid duplication, please use only one of these four methods.

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

(3) *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

(b) All written comments must be submitted in English and include copies of any material that the commenter refers to within the comment.

■ 7. Revise § 389.29 to read as follows:

**§ 389.29 Adoption of final rules.**

Final rules are prepared by representatives from all relevant offices of FMCSA. The final rule is then submitted to the Administrator for his/her consideration. If the Administrator adopts the rule, and once approved by the Office of the Management and Budget, if necessary, the final rule is published in the **Federal Register**, unless all persons subject to the final rule are named and personally served with a copy of it.

■ 8. Revise § 389.31 to read as follows:

**§ 389.31 Petitions for rulemaking.**

(a) Any interested person may petition the Administrator to establish, amend, or withdraw a rule.

(b) Each petition filed under this section must:

- (1) Be submitted in writing to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001;
- (2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;
- (3) Explain the interest of the petitioner in the action requested;
- (4) Contain any information, data, research studies, and arguments available to the petitioner to support the action sought.

■ 9. In § 389.39, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, add new paragraph (c), and revise newly redesignated paragraphs (d) and (e) to read as follows:

**§ 389.39 Direct final rulemaking procedures.**

\* \* \* \* \*

(c) *Extension of comment period.* FMCSA will extend the comment period for a direct final rule if it receives a notice of intent to submit an adverse comment. Upon receipt of the comment, FMCSA will determine if it is an adverse comment or not.

(d) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the **Federal Register**, if it has not received an adverse comment by the specified date in the direct final rule or any comment extension document. The confirmation rule document tells the public the effective date of the rule.

(e) *Withdrawal of a direct final rule.*

(1) If FMCSA receives an adverse

comment within the original or extended comment period, it will publish a rule document in the **Federal Register** before the effective date of the direct final rule advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

Issued under authority delegated in 49 CFR 1.87 on: July 31, 2017.

**Daphne Y. Jefferson,**  
Deputy Administrator.

[FR Doc. 2017-16452 Filed 8-4-17; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 170712657-7659-01]

RIN 0648-BG85

#### International Fisheries; Pacific Tuna Fisheries; Restrictions on Fishing for Sharks in the Eastern Pacific Ocean

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations under the Tuna Conventions Act to implement Resolution C-16-05 (*Resolution on the Management of Shark Species*) of the Inter-American Tropical Tuna Commission (IATTC) adopted in July 2016. Per the Resolution, this proposed rule would require purse seine vessel owners, operators, and crew to follow specified release requirements for sharks in the eastern Pacific Ocean (EPO). The rule would also prohibit longline vessels targeting tuna or swordfish in the EPO from using “shark lines” (a type of fishing gear used on longline vessels to target sharks). This proposed rule is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** Comments on the proposed rule and supporting documents must be submitted in writing by September 6, 2017.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0068, by any of the following methods:

**Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0068>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

**Mail:** Submit written comments to Daniel Studt, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2017-0068” in the comments.

**Instructions:** Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0068, or by contacting the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232-1274, or [RegionalAdministrator.WCRHMS@noaa.gov](mailto:RegionalAdministrator.WCRHMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Daniel Studt, NMFS, West Coast Region, 562-980-4073.

#### SUPPLEMENTARY INFORMATION:

##### Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The

full text of the Antigua Convention is available at: [https://www.iattc.org/PDFFiles2/Antigua\\_Convention\\_Jun\\_2003.pdf](https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf).

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, shark, and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

##### International Obligations of the United States Under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement certain decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by Title II of Public Law 114-81, directs that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out the United States' international obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The Secretary of Commerce's authority to promulgate such regulations has been delegated to NMFS.

##### Resolution on the Management of Shark Species

The IATTC adopted Resolution C-16-05 by consensus at its 90th meeting in July 2016 in response to the IATTC scientific staff's conservation recommendations to adopt release requirements for sharks caught by purse seine vessels and to prohibit the use of shark lines by longline vessels. The main objective of Resolution C-16-05 is to promote the conservation of shark species in the EPO by reducing incidental catch mortalities in IATTC fisheries. Although U.S. commercial fishing vessels in the EPO do not target sharks, some are caught incidentally.

The resolution includes release requirements for sharks caught on purse seine vessels, which is expected to

increase the chance of survival. Based on summarized catch data from the IATTC, silky shark (*Carcharhinus falciformis*) and hammerhead shark (*Sphyrna spp.*) are among the shark species most frequently caught by purse seine vessels fishing for tuna in the IATTC Convention Area. Global concern for these species of sharks has increased in recent years as evidenced by the listing of scalloped hammerhead shark (*Sphyrna lewini*) in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in September 2014 and the future listing of silky shark in Appendix II in October 2017. In addition, NMFS designated the Eastern Pacific ocean distinct population segment of scalloped hammerhead shark as endangered under the Endangered Species Act (79 FR 38213; July 2014), and it is this population that is incidentally caught by tuna fishing vessels in the IATTC Convention Area.

Resolution C-16-05 includes two components that need to be implemented through rulemaking: (1) Release requirements for sharks caught by purse seine vessels, and (2) prohibiting the use of “shark lines” on longline vessels fishing in the IATTC Convention Area.

The first component of the Resolution calls for IATTC members and cooperating non-members (CPCs) to require purse seine vessels to follow requirements for the release of sharks caught in the IATTC Convention Area. Per the Resolution, any shark caught on a purse seine vessel in the IATTC Convention Area, whether live or dead, and that is not retained, must be promptly released unharmed, to the extent practicable, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the shark must be released out of the net by directly releasing it from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the vessel, or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available. The Resolution also includes provisions that prohibit the use of gaffs, hooks, or similar instruments in the handling of sharks, the lifting of sharks by the head, tail, gill slits, or spiracles, or by using bind wire against or inserted through the body, punching holes through the

bodies of sharks (e.g., to pass a cable through for lifting the shark). In addition, the proposed rule would prohibit the towing of a whale shark (*Rhincondon typus*) out of a purse seine net (e.g., using towing ropes).

The second component of the Resolution prohibits longline vessels targeting tuna or swordfish in the IATTC Convention Area from using “shark lines.” Shark lines are a type of fishing gear used to target sharks and consist of an individual hooked line or hooked lines attached to the floatline, or directly to the floats of longline gear, and deployed in the water column at depths shallower than the mainline.

#### Proposed Regulations for Sharks

This proposed rule would implement the two provisions of Resolution C-16-05, as described above, for U.S. commercial fishing vessels fishing for tuna or tuna-like species in the IATTC Convention Area. In addition, this proposed rule would also revise related regulations for accuracy and clarification purposes.

NMFS regulations already include fishing restrictions for shark species in the IATTC Convention Area. For example, NMFS regulations already require U.S. purse seine vessels fishing for tuna or tuna-like species to release all sharks, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. In addition, regulations at 50 CFR 300.27 already require U.S. purse seine vessels to ensure reasonable steps are taken to ensure safe release of any whale shark that is encircled in a purse seine net in the IATTC Convention Area.

This proposed rule would revise regulations at 50 CFR 300.27 to include more specific release requirements for sharks on purse seine vessels. The proposed regulations would require that any shark caught on a purse seine vessel in the IATTC Convention Area, whether live or dead, be promptly released unharmed, to the extent practicable, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. The proposed regulations also include specific requirements for the release of live sharks when caught in the IATTC, as described above.

In addition, this proposed rule would prohibit U.S. commercial longline vessels fishing for tuna or swordfish from using “shark lines” in the IATTC Convention Area. Shark lines are defined as a type of fishing gear consisting of an individual line or lines attached to the floatline or directly to

the floats of longline gear and are typically used to target sharks. Although U.S. longline vessels do not use shark lines when fishing in the IATTC Convention Area, this provision of the Resolution was intended to prohibit this gear in the EPO for all IATTC CPCs.

#### Classification

The NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Numbers: 0648-0148, 0648-0214, and 0648-0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

As described previously in the **SUPPLEMENTARY INFORMATION** section, the proposed regulations would implement IATTC Resolution C-16-05, which would establish fishing restrictions on U.S. purse seine and longline vessels fishing in the IATTC Convention Area.

The United States Small Business Administration (SBA) defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is

to be used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194. The new standard results in fewer commercial finfish businesses being considered small.

NMFS prepared analyses for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. Under the new size standards, the action on purse seine restriction on sharks would affect both large and small businesses, but the affected longline vessels are all considered to be small businesses.

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) Purse seine vessels with at least 363 metric tons (mt) of fish hold volume (size class 6 vessels) that typically have been based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine vessels with smaller fish hold volume that are based on the U.S. West Coast. Because this regulation would apply to purse seine vessels that catch shark, and there is no record of the coastal purse seine vessels catching shark, NMFS does not expect these regulations to impact the smaller coastal purse seine vessels.

As of May 4, 2017, there are 17 size class 6 purse seine vessels on the IATTC Regional Vessel Register. The number of size class 6 purse seine vessels on the IATTC Regional Vessel Register has increased substantially in the past three years, due in part to uncertainty regarding fishing access pursuant to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (aka the South Pacific Tuna Treaty), for which negotiations were concluded in 2016. Size class 6 purse seine vessels land most of the yellowfin, skipjack, and bigeye tuna catch in the EPO. Ex-vessel price information for class size 6 purse seine vessels that fished exclusively in the EPO in 2015 and 2016 specific to the individual vessels are not available to NMFS because these vessels did not land on the U.S. West Coast, and the cannery receipts are not available through the IATTC. However, estimates for large purse seine vessels based in the WCPO that fish in both the EPO and WCPO may be used as a proxy for U.S. large purse seine vessels. The number of these U.S. purse seine vessels is approximated by the number with

Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsements, which are the NMFS-issued authorizations required to fish commercially for highly migratory species (HMS) on the high seas in the WCPFC Convention Area. As of May 2017, the number of purse seine vessels with WCPFC Area Endorsements was 37. Neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, so NMFS applied indicative regional cannery prices—as approximations of ex-vessel prices—to annual catches of individual vessels to estimate their annual receipts. Indicative regional cannery prices are available through 2014 (developed by the Pacific Islands Forum Fisheries Agency; available at <https://www.ffa.int/node/425>). Using this approach, NMFS estimates that among the affected vessels, the range in annual average receipts in 2012 through 2014 was \$3 million to \$20 million and the median was about \$13 million.

U.S. purse seine vessels fishing in the IATTC Convention Area incidentally catch a relatively small number of sharks. Since at least 2005, the observer coverage rates in the EPO on class size 6 purse seine vessels have been at 100 percent. Logbook data from 2015 and 2016 recorded a total of 3,960 sharks incidentally caught by size class 6 purse seine vessels operating in the IATTC Convention Area, which were released alive or discarded. This resulted in an average of roughly 2.29 sharks per fishing set caught and discarded or released alive by size class 6 purse seine vessels operating in the IATTC Convention area in 2015 and 2016. The proposed regulations for shark release requirements on purse seine vessels may slow fishing operations of some purse seine vessels that incidentally catch sharks due to additional time burden for releasing them by implementing the release requirements. In addition to the additional time burden for releasing sharks, some tuna may be incidentally released when sharks are directly released out of the brailer into the ocean, if any tuna are also scooped up into the brailer along with sharks during the process. The amount of tuna incidentally released would vary depending on the position of the shark in the net in relation to the tuna, accuracy of the crew member in targeting the shark with the brailer, and how large a brailer is being used, among others factors. In addition, some large purse seine vessels may already be voluntarily following some of these release procedures, such as the best practices for release established by the

International Seafood Sustainability Foundation, in the IATTC Convention Area.

U.S. West Coast vessels with deep-set longline gear primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally. U.S. West Coast-based longline vessels fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. Recently, the number of Hawaii-permitted longline vessels that have landed in U.S. West Coast ports has increased from one vessel in 2006 to 18 vessels in 2016. In 2016, 931 mt of highly migratory species were landed by Hawaii permitted longline vessels with an average ex-vessel revenue of approximately \$303,287 per vessel. Since at least 2005, the observer coverage rates in the EPO on deep-set longline vessels have been a minimum of 20 percent. While some sharks are caught incidentally, U.S. commercial longline vessels do not use shark lines while fishing in the EPO. As such, this proposed rule is not expected to affect these small entities.

The proposed regulation is not expected to have a significant economic impact on a substantial number of small entities. Only some of the entities for which these proposed regulations would apply are considered small businesses; however, disproportional economic effects are not expected between affected small and large businesses. Regulations at 50 CFR 300.27 already require purse seine vessels to release all sharks, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. In addition, regulations at 50 CFR 300.27 already require purse seine vessels to ensure reasonable steps are taken to ensure safe release of any whale shark that is encircled in a purse seine net. This proposed rule would revise regulations at 50 CFR 300.27 to specify the release requirements for sharks. As stated above, U.S. longline vessels do not use shark lines while fishing for tuna or swordfish in the EPO. Therefore, the proposed regulation is not expected to impact these small entities.

The proposed actions are not expected to substantially change the typical fishing practices of affected vessels, and any impact to the income of U.S. vessels would be minor. As a result, an Initial Regulatory Flexibility Analysis is not required, and one was not prepared for this proposed rule.



**List of Subjects in 50 CFR Part 300**

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: August 1, 2017.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS****Subpart C—Eastern Pacific Tuna Fisheries**

- 1. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

- 2. In § 300.21, add a definition for “Shark line” in alphabetical order to read as follows:

**§ 300.21 Definitions.**

\* \* \* \* \*

*Shark line* means: A type of fishing gear used to target sharks and consisting of an individual hooked line or hooked lines attached to the floatline or directly to the floats of longline gear and deployed in the water column at depths shallower than the mainline.

\* \* \* \* \*

- 3. In § 300.24, revise paragraphs (w), (x), (cc), and (dd), and add paragraphs (jj) through (kk) to read as follows:

**§ 300.24 Prohibitions.**

\* \* \* \* \*

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.27(g).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.27(h).

\* \* \* \* \*

(cc) To retain on board, transship, store, land, sell, or offer for sale any part or whole carcass of a mobulid ray, as described in § 300.27(i).

(dd) Fail to handle or release a mobulid ray as required in § 300.27(j).

\* \* \* \* \*

(jj) Fail to handle or release a shark as required in § 300.27(k).

(kk) Use a shark line in contravention of § 300.27(l).

- 4. In § 300.27, revise paragraphs (b) and (h), and add paragraphs (k) and (l) to read as follows:

**§ 300.27 Incidental catch and tuna retention requirements.**

\* \* \* \* \*

(b) *Release requirements for non-tuna species on purse seine vessels.* All purse seine vessels must release all billfish, ray (not including mobulid rays, which are subject to paragraph (i) of this section), dorado (*Coryphaena hippurus*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. Sharks caught in the IATTC Convention Area and that are not retained for consumption aboard the vessel (other than silky shark, oceanic whitetip shark, and whale shark, which may not be retained for consumption) must be released according to the requirements in paragraph (k) of this section.

\* \* \* \* \*

(h) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all

reasonable steps are taken to ensure its safe release. No whale shark may be towed out of a purse seine net (*e.g.*, using towing ropes).

\* \* \* \* \*

(k) *Shark handling and release requirements for purse seine vessels.* The crew, operator, and owner of a U.S. commercial purse seine fishing vessel must promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner must follow release procedures in the following two paragraphs.

(1) Sharks must be released out of the purse seine net by directly releasing the shark from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available.

(2) No shark may be gaffed or hooked, lifted by the head, tail, gill slits or spiracles, or lifted by using bind wire against or inserted through the body, and no holes may be punched through the bodies of sharks (*e.g.*, to pass a cable through for lifting the shark).

(l) *Shark line prohibition for longline vessels.* Any U.S. longline vessel used to fish for tuna or swordfish is prohibited from using any shark line in the IATTC Convention Area.

[FR Doc. 2017–16448 Filed 8–4–17; 8:45 am]

**BILLING CODE 3510–22–P**



# Notices

Federal Register

Vol. 82, No. 150

Monday, August 7, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 2, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 6, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725-17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control

number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Office of Advocacy and Outreach

*Title:* USDA/HSI Scholars Program Applications.

*OMB Control Number:* 0503-New.

*Summary of Collection:* The purpose of the U.S. Department of Agriculture (USDA) Hispanic-Serving Institutions (HSI) Scholars Program is to strengthen the long-term partnership between USDA and the HSIs; to increase the number of students studying and graduating in food, agriculture, natural resources, and other related fields of study, to develop a pool of scientists and professionals to fill jobs in the food, agricultural, natural resources system; and to create a talent pipeline for USDA. The USDA/HSI Scholars Program is a joint human capital initiative between the USDA and Hispanic-Serving Institutions. Through the program, USDA will offer scholarships to high school and college students who are seeking a bachelor's degree in the field of agriculture, food, or natural resource sciences and related disciplines at Hispanic-Serving Institutions. The USDA/HSI Scholars Program will offer scholarships and internships for a period of up to 4 years. The authority to collect this information is under 5 CFR 213.3102(r).

*Need and Use of the Information:* Information will be collected to determine the eligibility of applicants to the USDA/HSI Scholars Program. Each applicant to the program will be required to apply to announcements of the USDA/HSI Scholars Program and submit an application with required documentation. The required documentation will include: (1) A resume; (2) Proof of acceptance or enrollment in school, a letter of acceptance, or proof of registration, or letter from school official on official letterhead; (3) A copy of the last high school or college transcript; and (4) Two letters of recommendation. The collected information is needed to review all components of the application for completeness; and determine if the application meets the minimum eligibility requirements to be considered for the USDA/HSI Scholars

Program. Also the collected information will be used to determine if the applicants are a good fit for the university and agency based on their proposed major, interest, future academic/professional goals, and grade point average. Without the information the USDA/HSI Scholars Program would not be able to function consistently.

*Description of Respondents:*

Individuals or households.

*Number of Respondents:* 600.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 600.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2017-16544 Filed 8-4-17; 8:45 am]

**BILLING CODE 3412-88-P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; Annual Business Survey (ABS)

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** To ensure consideration, written comments must be submitted on or before October 6, 2017.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [PRAComments@doc.gov](mailto:PRAComments@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrice Norman, U.S. Census Bureau, EWD, 8K151, Washington, DC 20233-6600, (301) 763-7198, [Patrice.C.Norman@census.gov](mailto:Patrice.C.Norman@census.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The U.S. Census Bureau, with support from the National Science Foundation (NSF), plans to conduct the Annual Business Survey (ABS) for the 2017–2021 survey years. The ABS is a new survey designed to combine Census Bureau firm-level collections to reduce respondent burden, increase data quality, reduce operational costs, and operate more efficiently. The ABS replaces the five-year Survey of Business Owners (SBO) for employer businesses, the Annual Survey of Entrepreneurs (ASE), and the Business R&D and Innovation for Microbusinesses (BRDI–M) surveys. The Survey of Business Owners has been conducted as part of the economic census every five years since 1972 to collect selected economic and demographic characteristics for businesses and business owners by gender, ethnicity, race, and veteran status for both employer and nonemployer businesses. The Annual Survey of Entrepreneurs was conducted for three reference years (2014, 2015, and 2016) as a supplement to the SBO to provide more frequent data on economic and demographic characteristics for businesses and business owners by gender, ethnicity, race, and veteran status for employer businesses. The Business R&D and Innovation for Microbusinesses survey was first fielded in 2016 as an expansion to the Business R&D and Innovation Survey (BRDI–S) to measure firm innovation and investigate the incidence of R&D activities in growing sectors, such as small business enterprises not covered by BRDIS. Detailed R&D information for businesses with 10 or more employees will continue to be collected separately on the BRDIS. Statistics from the new ABS will be used by government program officials, industry organization leaders, economic and social analysts, business entrepreneurs, and domestic and foreign researchers in academia, business, and government. Estimates produced on owner demographic data may be used to assess business assistance needs, allocate available program resources, and create a framework for planning, directing, and assessing programs that promote the activities of disadvantaged groups; to assess minority-owned businesses by industry and area and to educate industry associations, corporations, and government entities; to analyze business operations in comparison to similar firms, compute market share, and assess business growth and future prospects. Estimates produced on research and development

and innovation may be used to compare R&D costs across industries, determine where R&D activity is conducted geographically, and identify the types of businesses with R&D; to contribute to the Bureau of Economic Analysis (BEA) system of national accounts; to increase investments in research and development, strengthen education, and encourage entrepreneurship; and to compare business innovation in the United States to that of other countries.

The ABS covers all domestic, nonfarm employer businesses with operations during the survey year. The ABS will provide the only comprehensive data on business owner demographics and business characteristics, including financing, research and development (for microbusinesses), and innovation. Nonemployer businesses are not in scope for the ABS. The Census Bureau will submit a separate clearance for approval to collect business and owner characteristics from nonemployer businesses if it is determined that a collection is needed to produce those estimates. The ABS will collect the following information from employer businesses:

- Owner characteristics, including the gender, ethnicity, race, and veteran status of the principal owner(s) from all firms in the sample
- Various business characteristics, including financing from all firms in the sample
- Research and development activity and costs from firms with less than 10 employees
- Innovation practices from all firms in the sample

Additional owner topics include military service, owner acquisition, job functions, number of hours worked, primary income, prior business ownership, age of owner, education and field of degree, citizenship and place of birth, and owner's reason for owning the business. Other business topics include number of owners and percent ownership, family owned and operated, business aspirations, funding sources, profitability, types of customers, types of workers, employee benefits, home operation, Web site use, and business activity. Starting with the 2018 survey, the ABS may include new module questions each year based on relevant business topics. Potential topics include technological advances, Internet usage, management and business practices, exporting practices, and globalization.

The draft content for the ABS will be cognitively tested with approximately 20 businesses under a separate OMB generic clearance. The questionnaire and interview protocol will be used to assess the feasibility and merit of

suggested changes that arise from the testing.

The 2017 ABS will sample approximately 850,000 employer businesses to produce more detailed statistics. Annually from 2018–2021, the survey sample will be reduced to approximately 300,000 businesses to reduce respondent burden. Businesses that reported business activity on Internal Revenue Service tax forms 941, “Employer’s Quarterly Federal Tax Return”; 944, “Employer’s Annual Federal Tax Return”; or any one of the 1120 corporate tax forms will be eligible for selection.

## II. Method of Collection

The ABS will be collected using only electronic instruments. Respondents will receive a letter notifying them of their requirement to respond and how to access the survey. Letters will be mailed from the Census Bureau’s National Processing Center in Jeffersonville, Indiana. Responses will be due approximately 30 days from receipt. Select businesses will receive a due date reminder via a letter prior to the due date. Additionally, two mail follow-ups to nonrespondents will be conducted at approximately one-month intervals. Select nonrespondents will receive a certified mailing for the second follow-up if needed.

## III. Data

*OMB Control Number:* 0607–XXXX.  
*Form Number(s):* This electronic-only collection will not utilize paper forms.  
*Type of Review:* Regular submission.  
*Affected Public:* Large and small employer businesses.

*Estimated Number of Respondents:* 850,000 employer businesses for 2017; 300,000 employer businesses for 2018–2021.

*Estimated Time per Response:* 35 minutes.

*Estimated Total Annual Burden Hours:* 495,833 for 2017; 175,000 for 2018–2021.

*Estimated Total Annual Cost to Public:* \$0.

*Respondent’s Obligation:* Mandatory.

*Legal Authority:* Title 13, United States Code, Sections 8(b), 131, and 182; and Title 42, United States Code, Sections 1861–76 (National Science Foundation Act of 1950, as amended).

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017-16605 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-992]

#### **Monosodium Glutamate From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2015-2016**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on monosodium glutamate (MSG) from the People's Republic of China (PRC) covering the period of review (POR) November 1, 2015, through October 31, 2016. This review covers 27 manufacturers/exporters (the companies) of the subject merchandise. Because none of these companies filed a separate rate application (SRA) and/or a separate rate certification (SRC), the Department preliminarily finds that the companies are part of the PRC-wide entity. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone at (202) 482-5484.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On November 4, 2016, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on MSG from the PRC.<sup>1</sup> In response, on November 29, 2016, Ajinomoto North America, Inc. (the petitioner) requested a review of 27 companies.<sup>2</sup> The Department initiated a review of all 27 companies on January 13, 2017.<sup>3</sup> For a list of these companies, please see Appendix I. The deadline for interested parties to submit an SRA or an SRC was February 13, 2017.<sup>4</sup> No party timely submitted an SRA or an SRC. Thereafter, the petitioner submitted comments on the Department's selection of respondents, encouraging the Department to employ its customary policy to treat companies as a part of the country-wide entity in reviews where no party submits an SRA or SRC.<sup>5</sup>

#### **Scope of the Order**

The product covered by this order is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. MSG in monohydrate form has a molecular formula of  $C_5H_8NO_4Na \cdot H_2O$ , a Chemical Abstract Service (CAS) registry number of 6106-04-3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of  $C_5H_8NO_4Na$ , a CAS registry number of 142-47-2, and a UNII number of C3C196L9FG. Merchandise covered by the scope of this order is currently

classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise subject to the order may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.<sup>6</sup>

#### **Methodology**

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

#### **Preliminary Results of Review**

The Department's policy regarding conditional review of the PRC-wide entity applies to this administrative review.<sup>7</sup> Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. The Department preliminarily determines that the 27 companies subject to review are part of the PRC-wide entity. None of the 27 companies filed an SRA or an SRC. No review has been requested for the PRC-wide entity. Therefore, the Department preliminarily determines that these companies have not demonstrated their eligibility for separate rate status and are part of the PRC-wide entity. The PRC-wide entity rate is 40.41 percent.<sup>8</sup>

#### **Public Comment**

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.<sup>9</sup> ACCESS is available to registered users at <http://access.trade.gov> and is available to all

<sup>6</sup> See *Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order*, 80 FR 487 (January 6, 2015).

<sup>7</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>8</sup> See *Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order*, 80 FR 487 (January 6, 2015).

<sup>9</sup> See 19 CFR 351.309(c)(1)(ii).

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 76920 (November 4, 2016).

<sup>2</sup> See Ajinomoto's letter, "Monosodium Glutamate from China: Request for Administrative Review," (November 29, 2016), at attachment 1 which lists 27 companies for which Ajinomoto sought a review.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 4294 (January 13, 2017) (*Initiation Notice*).

<sup>4</sup> See *Initiation Notice*.

<sup>5</sup> See Ajinomoto's letter, "MSG from China: Comments on Respondent Selection," (February 15, 2017).

parties in the Central Records Unit in Room B8024 of the main Commerce building. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.<sup>10</sup> Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.<sup>11</sup>

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Department within 30 days of the date of publication of this notice.<sup>12</sup> Requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230.<sup>13</sup> The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.<sup>14</sup> We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the PRC-wide entity at the PRC-wide rate of 40.41 percent. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of this review in the **Federal Register**.<sup>15</sup>

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity (*i.e.*, 40.41 percent); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: August 1, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Companies Covered by This Review

1. Anhui Fresh Taste International Trade Co., Ltd.
2. Baoji Fufeng Biotechnologies Co., Ltd.

3. Blu Logistics (China) Co., Ltd.
4. Bonroy Group Limited
5. Forehigh Trade and Industry Co., Ltd.
6. Fujian Province Jianyang Wuyi MSG Co., Ltd.
7. Golden Banyan Foodstuffs Industry Co., Ltd.
8. Henan Lotus Flower Gourmet Powder Co.
9. Hong Kong Sungiven International Food Co., Limited
10. Hulunbeier Northeast Fufeng Biotechnologies Co., Ltd.
11. K&S Industry Limited
12. King Cheong Hong International
13. Langfang Meihua Bio-Technology Co., Ltd.
14. Liangshan Linghua Biotechnology Co., Ltd.
15. Lotus Health Industry Holding Group
16. Meihua Group International Trading (Hong Kong) Limited
17. Meihua Holdings Group Co., Ltd., Bazhou Branch
18. Neimenggu Fufeng Biotechnologies Co., Ltd.
19. Pudong Prime Int'l Logistics, Inc.
20. Qinhuangdao Xingtai Trade Co., Ltd.
21. S.D. Linghua M.S.G. Incorporated Co.
22. Shandong Linghua Monosodium Glutamate Incorporated Company
23. Shanghai Totole Food Ltd.
24. Shijiazhuang Standard Imp & Exp Co., Ltd.
25. Sunrise (HK) International Enterprise Limited
26. Tongliao Meihua Biological Sci-Tech Co., Ltd.
27. Zhejiang Medicines & Health

[FR Doc. 2017-16576 Filed 8-4-17; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-520-804]

#### Certain Steel Nails From the United Arab Emirates: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of this sunset review, the Department of Commerce (the Department) finds that revocation of the antidumping duty order on certain steel nails from the United Arab Emirates (UAE) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

**DATES:** Applicable August 7, 2017.

##### FOR FURTHER INFORMATION CONTACT:

Annatheia Cook, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

<sup>10</sup> See 19 CFR 351.309(d)(1) and (2).

<sup>11</sup> See 19 CFR 351.309(c) and (d); see also 19 CFR 351.303 (for general filing requirements).

<sup>12</sup> See 19 CFR 351.310(c).

<sup>13</sup> See 19 CFR 310(d).

<sup>14</sup> See 19 CFR 351.212(b)(1).

<sup>15</sup> For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0250.

**SUPPLEMENTARY INFORMATION:** On April 27, 2011, the Department of Commerce (Department) published the notice of the *AD Order* on nails from the UAE.<sup>1</sup> On April 3, 2017, the Department published the notice of initiation of the first sunset review of the *AD Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (Act).<sup>2</sup> On April 4, 2017, the Department received a notice of intent to participate from one domestic interested party: Mid Continent Steel & Wire, Inc. (Mid Continent) within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> Mid Continent claimed interested party status under section 771(9)(C) of the Act, as a manufacturer in the United States of a domestic like product. On May 4, 2017, the Department received a complete and adequate substantive response from Mid Continent within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> The Department received no substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *AD Order*.

### Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. These imports are currently classified under subheadings 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.<sup>5</sup>

<sup>1</sup> See *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012) (*AD Order*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 16159 (April 3, 2017) (Notice of Initiation).

<sup>3</sup> See Mid Continent's submission "Re: Steel Nails from the United Arab Emirates: Entry of Appearance, Notice of Intent to Participate in Review, and APO Application" (April 4 2017).

<sup>4</sup> See Mid Continent's submission "Re: Certain Steel Nails from the United Arab Emirates: Substantive Response to Notice of Initiation of Sunset review" (May 3, 2017).

<sup>5</sup> For a full description of the scope of the *AD Order*, see Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Assistant Secretary for Enforcement and Compliance for Antidumping and Countervailing Duty Operations, "First Expedited Sunset Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates: Issues and Decision Memorandum for the Final Results," dated concurrently with, and adopted by, this notice (Issues and Decision Memorandum).

### Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *AD Order* and the magnitude of the margins likely to prevail if the order were revoked, is provided in the Issues and Decision Memorandum, which is hereby adopted by this notice.<sup>6</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, room B0824 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed on the Internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

### Final Results of Sunset Review

Pursuant to section 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the *AD Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 184.41 percent.

### Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, 19 CFR 351.218, and 19 CFR 351.221(c)(5)(ii).

<sup>6</sup> See Issues and Decision Memorandum.

Dated: July 28, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
- VII. Final Results of Review
- VIII. Recommendation

[FR Doc. 2017-16500 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-DS-P**

### DEPARTMENT OF COMMERCE

#### International Trade Administration

[A-570-972; A-583-848]

#### Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on stilbenic optical brightening agents (stilbenic OBAs) from the People's Republic of China (PRC) and Taiwan would likely lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Reviews" section of this notice.

**DATES:** Effective August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1593.

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 10, 2012, the Department published the antidumping duty orders on stilbenic OBAs from the PRC and Taiwan.<sup>1</sup> On April 3, 2017, the

<sup>1</sup> See *Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Amended*

Department initiated the first sunset reviews of the antidumping duty orders on stilbenic OBAs from the PRC and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On April 18, 2017, the Department received a timely notice of intent to participate in the sunset reviews from Archroma, U.S., Inc. (Archroma), the descendant company of the petitioner in the original investigation, within the 15-day period specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> On May 3, 2017, domestic interested parties filed a timely substantive response with the Department pursuant to 19 CFR 351.218(d)(3)(i).<sup>4</sup> The Department did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the *Orders*.

### Scope of the Orders

The merchandise subject to these *Orders* is final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products. These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTS US), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. The Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the *Orders*.<sup>5</sup>

### Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Decision

*Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27423 (May 10, 2012); and *Certain Stilbenic Optical Brightening Agents From Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27419 (May 10, 2012) (*Orders*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 16159 (April 3, 2017).

<sup>3</sup> Berwick Offray LLC claimed interested party status as a manufacturer of the domestic like product, pursuant to section 771(9)(C) of the Act.

<sup>4</sup> See *Certain Stilbenic Optical Brightening Agents from China*. Case No. A-570-972—Petitioner's Substantive Response, (May 3, 2017), and *Certain Stilbenic Optical Brightening Agents from Taiwan*, Case No. A-583-848—Petitioner's Substantive Response, (May 3, 2017).

<sup>5</sup> See the "Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan" from Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Gary Taverman Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated concurrently with, and hereby adopted by, this notice (Decision Memorandum).

Memorandum. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were to be revoked.

The Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed at <http://enforcement.trade.gov/frn/>. The signed Decision Memorandum and the electronic version of the Decision Memorandum are identical in content.

### Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail if the *Orders* are revoked would be up to 106.17 percent for the PRC and up to 6.19 percent for Taiwan.

### Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

### Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: August 1, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. History of the Orders
- V. Legal Framework
- VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2017-16573 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Meeting of the President's Advisory Council on Doing Business in Africa (PAC-DBIA)

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an Open Meeting of the President's Advisory Council on Doing Business in Africa (PAC-DBIA).

**SUMMARY:** The President's Advisory Council on Doing Business in Africa (Council) will hold a meeting via teleconference, during which the Secretary of Commerce will provide feedback on the Council's introductory letter to the President, submitted in February 2017, and published at <http://trade.gov/pac-dbia/recmeet.asp>. The Secretary will also provide formal direction to the Council for the next phase of analysis and recommendations to be requested on behalf of the President. The final agenda for the meeting will be posted at least one week in advance of the meeting on the Council's Web site at <http://trade.gov/pac-dbia>.

**DATES:** This teleconference will be held on August 22, 2017, 2:00–3:00 p.m. (EDT). The deadline for members of the public to register to join the meeting in listen mode or to submit comments for consideration at the meeting is 5:00 p.m. (EDT), August 15, 2017.

**ADDRESSES:** The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register

(including for auxiliary aids) and any written comments should be submitted by the deadline to: President's Advisory Council on Doing Business in Africa, U.S. Department of Commerce, Room 22004, 1401 Constitution Avenue NW., Washington, DC 20230, or by email to [dbia@trade.gov](mailto:dbia@trade.gov). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

**FOR FURTHER INFORMATION CONTACT:**

Giancarlo Cavallo or Ashley Bubna, Designated Federal Officers, President's Advisory Council on Doing Business in Africa, Department of Commerce, 1401 Constitution Ave. NW., Room 22004, Washington, DC 20230 telephone: 202-482-2091, email: [dbia@trade.gov](mailto:dbia@trade.gov).

**SUPPLEMENTARY INFORMATION:**

*Background:* The President's Advisory Council on Doing Business in Africa was established on November 4, 2014, to advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa. The Council's charter was renewed for a second, two-year term in September 2016. This Council is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

*Public Submissions:* The public is invited to submit written statements to the Council. Statements must be received by 5:00 p.m. August 15, 2017 by either of the following methods:

*a. Electronic Submissions*

Submit statements electronically to Giancarlo Cavallo and Ashley Bubna, Designated Federal Officers, President's Advisory Council on Doing Business in Africa, via email: [dbia@trade.gov](mailto:dbia@trade.gov).

*b. Paper Submissions*

Send paper statements to Giancarlo Cavallo and Ashley Bubna, Designated Federal Officers, President's Advisory Council on Doing Business in Africa, Department of Commerce, 1401 Constitution Ave. NW., Room 22004, Washington, DC 20230.

Statements will be provided to the members in advance of the meeting for consideration and also will be posted on the President's Advisory Council on Doing Business in Africa Web site (<http://trade.gov/pac-dbia>) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only

information that you wish to make publicly available.

*Meeting minutes:* Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting on the Council's Web site at <http://trade.gov/pac-dbia>.

Dated: August 2, 2017.

**Fred Stewart,**

*Director, Office of Africa.*

[FR Doc. 2017-16610 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-DR-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[C-570-984]**

**Drawn Stainless Steel Sinks From the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review, 2016**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty (CVD) order on drawn stainless steel sinks (sinks) from the People's Republic of China (PRC) for the period January 1, 2016, through December 31, 2016, based on the timely withdrawal of the request for review.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Medley, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4987.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 3, 2017, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on sinks from the PRC for the period January 1, 2016, through December 31, 2016.<sup>1</sup> On April 28, 2017, the Department received a timely request, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), from Zhongshan Superte Kitchenware Co., Ltd. (Superte), an exporter of subject merchandise, to conduct an administrative review of this CVD order.<sup>2</sup> Based upon this request, on June

7, 2017, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of administrative review for this CVD order with respect to Superte.<sup>3</sup> On June 26, 2017, Superte timely withdrew its request for an administrative review.<sup>4</sup>

**Rescission Review**

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, Superte withdrew its request for review by the 90-day deadline. No other party requested an administrative review of Superte. Accordingly, we are rescinding the administrative review of the CVD order on sinks from the PRC covering the period January 1, 2016, through December 31, 2016.

**Assessment**

The Department will instruct Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2016, through December 31, 2016, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice in the **Federal Register**.

**Notification Regarding Administrative Protective Order**

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751 of the Act and 19 CFR 351.213(d)(4).

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 16163 (April 3, 2017).

<sup>2</sup> See Superte's April 28, 2017, Request for CVD Administrative Review.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 26444 (June 7, 2017) (*Initiation Notice*).

<sup>4</sup> See Superte's June 26, 2017, Withdrawal of Administrative Review Request.



Dated: August 1, 2017

**James Maeder,**

*Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2017-16572 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-824]

#### **Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015–2016**

**AGENCY:** Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET Film) from India. The period of review (POR) is July 1, 2015, through June 30, 2016. The Department preliminarily determines that Jindal Poly Films Limited of India did, but that SRF Limited did not, make sales of subject merchandise at prices below normal value (NV) during the POR. The preliminary results are listed below in the section titled “Preliminary Results of Review.” Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith; AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5255.

#### **SUPPLEMENTARY INFORMATION:**

##### **Scope of the Order**

The products covered by this order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for

convenience and customs purposes. The written description of the scope of the order is dispositive.

#### **Background**

DuPont Teijin Films, Mitsubishi Polyester Film Inc., and SKC, Inc. (the petitioners) requested reviews of Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex Corporation Ltd. (Polyplex Ltd.), SRF Limited (SRF), Jindal Poly Films Limited of India (Jindal),<sup>1</sup> and Vacmet.<sup>2</sup> Polyplex USA and Flex USA requested reviews of SRF, Jindal, Garware, Ester, MTZ Polyesters Ltd. (MTZ), Vacmet India Limited, Uflex Ltd. and Polyplex Ltd.<sup>3</sup> Jindal and SRF each self-requested.<sup>4</sup> Based on these timely requests, the Department initiated a review of ten companies in this proceeding.<sup>5</sup>

On November 2, 2016, the Department selected Jindal and SRF as mandatory respondents.<sup>6</sup> On December 9, 2016, Jindal and SRF each separately withdrew their self-requests for review.<sup>7</sup>

<sup>1</sup> On May 23, 2017, the Department sent Jindal Poly Films Ltd. (India) a supplemental questionnaire requesting clarification of its name. See Department Letter re: Jindal Poly Films Ltd. (India)'s Name, dated May 23, 2017. Based on Jindal Poly Films Ltd. (India)'s response, we have determined that it is the same company as Jindal Poly Films of India. See Jindal Poly Films Ltd. (India)'s May 25, 2017 Response. Accordingly, Jindal Poly Films Ltd. (India) and Jindal Poly Films of India will be referred to as “Jindal” for the remainder of this notice.

<sup>2</sup> See Petitioners' Letter, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Antidumping Duty Administrative Review,” dated August 1, 2016.

<sup>3</sup> See Polyplex USA and Flex USA's Letter, “Request for Administrative Review,” dated July 29, 2016.

<sup>4</sup> See Jindal Poly Films Ltd. (India)'s Letter, “Polyethylene Terephthalate (PET) Film from India: Requests for Administrative Review of the Antidumping Duty Order and Countervailing Duty Order,” dated July 29, 2016; see also SRF Limited of India's Letter, “Polyethylene Terephthalate (PET) Film from India/Request for Antidumping Admin Review/SRF Limited,” dated July 30, 2016; see also SRF's Letter, “Polyethylene Terephthalate (PET) Film from India/Withdrawal of Request for Antidumping Admin Review/SRF Limited,” dated December 9, 2016.

<sup>5</sup> These companies were Ester, Garware, Jindal Poly Films Limited of India, Jindal Poly Films Ltd. (India), MTZ, Polyplex Corporation, SRF, Uflex Ltd., Vacmet, and Vacmet India Limited. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720, (September 12, 2016) (*Initiation Notice*).

<sup>6</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Selection of Respondents for Individual Examination,” dated November 2, 2016.

<sup>7</sup> See Jindal's Letter, “Polyethylene Terephthalate (PET) Film from India: Withdrawal of Requests for Administrative Review of the Antidumping Duty Order and Countervailing Duty Order,” dated December 9, 2016; see also SRF's Letter, “Polyethylene Terephthalate (PET) Film from India/Withdrawal of Request for Antidumping Admin Review/SRF Limited,” dated December 9, 2016.

On December 12, 2016, the petitioners withdrew their requests for Ester, Garware, Polyplex and Vacmet.<sup>8</sup> Also on December 12, 2016, Polyplex USA and Flex USA withdrew their requests for SRF, Jindal, Garware, Ester, MTZ, Vacmet India Limited, Uflex Ltd., and Polyplex Corporation.<sup>9</sup>

#### **Partial Rescission of Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), based on the timely withdrawal of the requests for review, we are rescinding this administrative review with respect to the following companies named in the *Initiation Notice*: Ester, Garware, MTZ, Polyplex Ltd., Uflex Ltd., Vacmet, and Vacmet India Limited.

#### **Methodology**

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov/login.aspx> and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### **Preliminary Results of Review**

As a result of this review, we preliminarily determine the following weighted-average dumping margins for

<sup>8</sup> See Petitioners' Letter, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of Request for Antidumping Duty Administrative Review,” dated December 12, 2016.

<sup>9</sup> See Polyplex's Letter, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Withdrawal of Administrative Review,” dated December 12, 2016.



the period July 1, 2015, through June 30, 2016.

Manufacturer/exporter	Weighted-average dumping margins (percent)
Jindal Poly Films Limited of India <sup>10</sup> .....	2.34
SRF Limited .....	0.00

### Disclosure and Public Comment

The Department will disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.<sup>11</sup> Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice.<sup>12</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.<sup>13</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>14</sup> Case and rebuttal briefs should be filed using the Department's electronic filing system, ACCESS.<sup>15</sup> In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5:00 p.m. Eastern Time.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.<sup>16</sup> Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401

Constitution Avenue NW., Washington, DC 20230.<sup>17</sup>

The Department will issue the results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless that time is extended.

### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to liquidate entries of merchandise produced and/or exported by respondent companies. We intend to issue instructions to CBP 15 days after the date of publication of the results of this review.

For the individually examined respondents Jindal and SRF, if the weighted-average dumping margins are not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate importer-specific (or customer-specific) *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). However, where the respondent did not report the entered value for its sales, we will calculate importer-specific (or customer-specific) per-unit duty assessment rates. Where a respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PET Film from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash

deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all others rate for this proceeding, 5.71 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1) and 351.221(b)(4).

Dated: July 31, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Partial Rescission
4. Scope of the Order
5. Comparisons to Normal Value
6. Product Comparisons
7. Date of Sale
8. Export Price
9. Normal Value
10. Currency Conversion
11. Recommendation

[FR Doc. 2017–16501 Filed 8–4–17; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>10</sup> The *Initiation Notice* also lists the company as Jindal Poly Films Ltd. (India). As noted in Decision Memoranda, dated concurrently with this notice, the Department has determined that Jindal Poly Films Limited of India is the same company as Jindal Poly Films Ltd. (India).

<sup>11</sup> See 19 CFR 351.224(b).

<sup>12</sup> See 19 CFR 351.309(c)(ii).

<sup>13</sup> See 19 CFR 351.309(d).

<sup>14</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>15</sup> See 19 CFR 351.303.

<sup>16</sup> See 19 CFR 351.310(c).

<sup>17</sup> See 19 CFR 351.310(d).

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-489-805]

**Certain Pasta From Turkey: Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey. The review covers one exporter and producer of subject merchandise, Mutlu Makarnacilik Sanayi ve Ticaret A.S. (Mutlu). The period of review (POR) is July 1, 2015 through June 30, 2016. The Department preliminarily determines that Mutlu did not make a *bona fide* sale during the POR; therefore, we are preliminarily rescinding this administrative review. Interested parties are invited to comment on the preliminary results of this review.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2924.

**SUPPLEMENTARY INFORMATION:****Background**

On July 24, 1996, the Department published the antidumping duty order on pasta from Turkey.<sup>1</sup> On July 5, 2016, the Department published a notice of an opportunity for interested parties to request an administrative review of the antidumping duty order on pasta from Turkey.<sup>2</sup> On July 29, 2016, the Department received a timely request for review of the order from Mutlu.<sup>3</sup> Accordingly, on September 12, 2016, the Department published a notice of initiation of administrative review of the antidumping duty order on pasta from Turkey, covering the period July 1,

2015, through June 30, 2016.<sup>4</sup> The Department subsequently issued initial and supplemental questionnaires to Mutlu, including an importer questionnaire to which we requested that Mutlu respond, if necessary, in collaboration with its importer.<sup>5</sup> We received timely responses to these questionnaires. On April 3, 2017, and again on May 31, 2017, the Department extended the preliminary results of this review.<sup>6</sup>

**Scope of the Order**

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white.

For a full description of the scope of the order, *see* the Preliminary Decision Memorandum, (Preliminary Decision Memorandum).<sup>7</sup>

**Methodology**

The Department is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/>

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

<sup>5</sup> See Department Letter to Mutlu, dated June 19, 2017 (importer questionnaire).

<sup>6</sup> See Memorandum, "Certain Pasta from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 3, 2017; *see also* Memorandum, "Certain Pasta from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 31, 2017 (extending the deadline until July 31, 2017).

<sup>7</sup> See "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Pasta from Turkey," dated July 31, 2017. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix I of this notice.

*frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

**Preliminary Rescission of the Antidumping Administrative Review of Mutlu**

As discussed in the *Bona Fide* Sales Analysis Memorandum,<sup>8</sup> the Department preliminarily finds that the sale made by Mutlu serving as the basis for this review is not a *bona fide* sale. Limited information is on the record of this review, due to Mutlu's importer's failure to respond to the importer questionnaire. Nonetheless, the Department reached this conclusion based on the totality of the record information surrounding Mutlu's reported sales, including those sales prices and quantities and the limited number of sales (*i.e.*, one sale) that Mutlu reported during the POR.

Because the non-*bona fide* sale was the only reported sale of subject merchandise during the POR, we find that Mutlu had no reviewable transactions during this POR. Accordingly, we are preliminarily rescinding this administrative review.<sup>9</sup> Given that the factual information used in our *bona fides* analysis of Mutlu's sale involves business proprietary information, *see* the *Bona Fide* Sales Analysis Memorandum for a full discussion of the basis for our preliminary determination.

**Public Comment**

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of review.<sup>10</sup> Rebuttals to case briefs may be filed no later than five days after the briefs are filed.<sup>11</sup> All rebuttal comments must be limited to comments raised in the case briefs.<sup>12</sup>

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement & Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.<sup>13</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral

<sup>8</sup> See Memorandum, "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Turkey: Preliminary *Bona Fide* Sales Analysis for Mutlu Makarnacilik Sanayi ve Ticaret A.S.," (*Bona Fide* Sales Analysis Memorandum) dated concurrently with, and hereby adopted by, this notice.

<sup>9</sup> See 19 CFR 351.213(d)(3).

<sup>10</sup> See 19 CFR 351.309(c).

<sup>11</sup> See 19 CFR 351.309(d)(1).

<sup>12</sup> See 19 CFR 351.309(d)(2).

<sup>13</sup> See 19 CFR 351.310(c).

<sup>1</sup> See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 43584 (July 5, 2016).

<sup>3</sup> See Letter from Mutlu, "Request for Administrative Review; Antidumping Duty Order Involving Certain Pasta from Turkey," dated July 29, 2016.

argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.<sup>14</sup> Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022, and stamped with the date and time of receipt by 5 p.m. ET on the due date.<sup>15</sup>

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs received, no later than 90 days after the date these preliminary results of review are issued, pursuant to section 751(a)(2)(B) of the Act.

#### Assessment Rates

If the Department proceeds to a final rescission of this administrative review, the assessment rate to which Mutlu's shipments will be subject will not be affected by this review. If the Department does not proceed to a final rescission of this administrative review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) assessment rates based on the final results of this review.

#### Cash Deposit Requirements

If the Department proceeds to a final rescission of this administrative review, Mutlu's cash deposit rate will continue to be the all-others rate. If the Department issues final results for this administrative review, the Department will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 31, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### List of Sections in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Conclusion

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-523-808]

#### Certain Steel Nails From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014-2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (nails) from the Sultanate of Oman (Oman). The period of review (POR) is December 29, 2014, through June 30, 2016. This administrative review covers two exporters of the subject merchandise, both of which were selected as mandatory respondents, Oman Fasteners LLC (Oman Fasteners) and Overseas International Steel Industry LLC (OISI). The Department preliminarily determines Oman Fasteners and OISI made sales of subject merchandise at less than normal value during the POR. Additionally, we are rescinding this administrative review, in part, with

respect to 12 companies, based on the timely withdrawal of Mid Continent Steel & Wire, Inc.'s (the petitioner) request for administrative review. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatryan or Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6412 or (202) 482-3936, respectively.

**SUPPLEMENTARY INFORMATION:** On July 13, 2015, the Department published in the **Federal Register** an AD order on nails from Oman.<sup>1</sup> On July 5, 2016, the Department notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in July 2016, including the AD order on nails from Oman. The Department received timely requests from Oman Fasteners, OISI, and the petitioner to conduct an administrative review of certain exporters covering the POR. On September 12, 2016, the Department published a notice initiating an AD administrative review of nails from Oman covering 15 companies for the POR.<sup>2</sup>

In the *Initiation Notice*, the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.<sup>3</sup> On November 9, 2016, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.<sup>4</sup> As a result, pursuant to

<sup>1</sup> See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

<sup>3</sup> See *Initiation Notice*, 81 FR at 62720.

<sup>4</sup> See Memorandum entitled, "Respondent Selection in the first Antidumping Duty Administrative Review of Certain Steel Nails from Oman," dated November 9, 2016 (Respondent Selection Memorandum).

<sup>14</sup> See 19 CFR 351.310(d).

<sup>15</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters of nails from Oman by U.S. entry volume during the POR (*i.e.*, Oman Fasteners and OISI).<sup>5</sup> Accordingly, we issued the AD questionnaire to these companies, Oman Fasteners and OISI, the two mandatory respondents.<sup>6</sup> On December 12, 2016, the petitioner timely withdrew its request for administrative review, pursuant to 19 CFR 351.213(d)(1), of all the producers and exporters except for Oman Fasteners, OISI, and Overseas Distribution Services Inc. (ODS).<sup>7</sup>

On March 23, 2017, the Department extended the preliminary results in this review to no later than July 31, 2017.<sup>8</sup>

### Partial Rescission of Administrative Review

The Department received timely requests to conduct an administrative review of certain exporters covering the POR. Because the petitioner timely withdrew its requests for review of all of the companies listed in the *Initiation Notice*, with the exception of Oman Fasteners, OISI, and ODS, we are rescinding the administrative review with respect to those 12 companies, pursuant to 19 CFR 351.213(d)(1). The Department has rescinded the administrative review with respect to the remaining 12 companies on which we initiated this review pursuant to 19 CFR 351.213(d)(1).<sup>9</sup> Accordingly, the remaining companies subject to the instant review are: Oman Fasteners, OISI, and ODS.

### Scope of the Order

The merchandise covered by this order is nails having a nominal shaft length not exceeding 12 inches.<sup>10</sup> Merchandise covered by the order is

currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.<sup>11</sup>

### Methodology

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.<sup>12</sup> A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice.

### Adverse Facts Available

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use “facts otherwise available” if: (1) Necessary information is not on the record; or (2) an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide

information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information (*i.e.*, adverse facts available, or AFA). In doing so, and under the Trade Preferences Extension Act of 2015 (TPEA), the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. However, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

In accordance with section 776 of the Act, the Department preliminarily determines that the application of facts

<sup>5</sup> See Respondent Selection Memorandum.

<sup>6</sup> See Department Letter, “Administrative Review of Certain Steel Nails from Oman: Antidumping Duty Questionnaire,” dated November 9, 2016.

<sup>7</sup> See Letter from the petitioner, “Certain Steel Nails from Oman: Withdrawal of Request for Administrative Review,” dated December 12, 2016.

<sup>8</sup> See Memorandum, “Certain Steel Nails from the Sultanate of Oman: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated March 23, 2017.

<sup>9</sup> Astrotech Steels Private Ltd, Consolidated Shipping services LLC, Damco India Private Ltd., Flyjac Logistics Private Ltd., International Maritime & Aviation LLC, Liladhar Pasoo India Logistics Private Ltd., Ivk Manuport Logistics LLC, Raajratna Metal Industries Ltd., Shanxi Tianli Industries Co. Ltd., Swift Freight India Private Ltd., United Building Material Factory, Uniworld Logistics Pvt Ltd.

<sup>10</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

<sup>11</sup> See Memorandum, “Decision Memorandum for Preliminary Results of the 2014–2016 Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman,” dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum). The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/fn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

<sup>12</sup> See Preliminary Decision Memorandum.

available is warranted for OISI because OISI has not provided the necessary information on the record, pursuant to section 776(a)(1) of the Act. Specifically, OISI reported that ODS was its affiliate in the United Arab Emirates, but failed to provide adequate information regarding its relationship with ODS. OISI also failed to provide adequate information regarding its U.S. sales data, such that the Department could not use the data in its calculations. Furthermore, OISI has withheld requested information, failed to provide such information in the form and manner required, impeded this review, and reported information that could not be verified, the use of facts available for the preliminary results is warranted, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act. For a full discussion, *see* the Preliminary Decision Memorandum.

Furthermore, by withholding requested information, failing to provide such information in the manner and form required, impeding this review, and reporting information that could not be verified, OISI failed to cooperate with the Department by not acting to the best of its ability to comply with a request for information by the Department, pursuant to section 776(b)(1) of the Act. Accordingly, we preliminarily determine to apply adverse facts available (AFA) to OISI, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. Record information indicates that OISI and ODS are affiliated and may meet our criteria for collapsing, due to OISI's reported shared ownership and intertwined operations with ODS. Because OISI did not answer our supplemental questionnaire, we do not have all of the information we need on the record in order to conduct a collapsing analysis. Accordingly, we have applied an adverse inference to the factual information on the record, and have, as AFA, collapsed OISI and ODS into a single entity. Furthermore, as we do not have adequate information on the record to calculate a margin for OISI, we have calculated its margin based on total AFA. Specifically, we are applying a rate of 154.33 percent, which was calculated by Petitioner in the petition in this investigation.<sup>13</sup> We have corroborated this rate with information obtained in the course of this

administrative review, consistent with section 776(c)(1) of the Act. For further discussion, *see* the Preliminary Decision Memorandum.

#### Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period December 29, 2014 through June 30, 2016:

Exporter/producer	Weighted-average dumping margins (percent)
Oman Fasteners LLC .....	99.88
Overseas International Steel Industry LLC/Overseas Distribution Services Inc <sup>14</sup> .....	154.33

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (i.e., 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).<sup>15</sup> For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction.<sup>16</sup> We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de*

*minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the twelve companies for which this review is rescinded, antidumping duties will be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirement

The following deposit requirements will be effective upon publication of the notice of the final results of administrative review for all shipments of nails from Oman entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.10 percent *ad valorem*, the all-others rate established in the less-than-fair value investigation.<sup>17</sup>

<sup>14</sup> ODS was initially a non-selected respondent subject to this administrative review; however, because we have, as AFA, collapsed ODS with mandatory respondent OISI, we are assigning both the same AFA margin.

<sup>15</sup> In these preliminary results, the Department applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

<sup>16</sup> *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>17</sup> *See Certain Steel Nails from the Republic of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015).

<sup>13</sup> Letter from the Department, "Certain Steel Nails India, the Republic of Korea, the Sultanate of Oman, Malaysia, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam," dated May 29, 2014 (Petition). *See also* section 776(b)(2)(A) (stating that the petition is a potential source of information for the application of adverse facts available).

## Disclosure and Public Comment

The Department intends to disclose the calculations used in our analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.<sup>18</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.<sup>19</sup> Executive summaries should be limited to five pages total, including footnotes.<sup>20</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>21</sup>

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.<sup>22</sup>

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review

period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results and partial rescission of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: July 31, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Affiliation
- V. Use of Facts Otherwise Available and Adverse Interferences
- VI. Discussion of the Methodology
- VII. Recommendation

[FR Doc. 2017-16497 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-557-816]

### Certain Steel Nails From Malaysia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2014-2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel nails from Malaysia. The period of review covers December 29, 2014, through June 30, 2016. The review covers three producers/exporters of the subject merchandise. We preliminarily determine that sales of subject merchandise by the collapsed entities Inmax and Region, both of which were selected for individual examination, were made at less than normal value during the period of review. We are rescinding the review with respect to 16 companies for which the request for review was timely withdrawn. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable August 7, 2017.

## FOR FURTHER INFORMATION CONTACT:

Edythe Artman or Madeline Heeren, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3931 or (202) 482-9179, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

These preliminary results of review are made in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). On September 12, 2016, the Department published the notice of initiation for the administrative review.<sup>1</sup> For a complete description of the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum.<sup>2</sup> A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and to all parties in the Central Records Unit, located in Room B8094 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Order

The products covered by the scope of the order are certain steel nails from Malaysia. For a complete description of the scope, *see* Appendix I of this notice.

### Partial Rescission of Administrative Review

In the *Initiation Notice*, we initiated a review of 19 companies. However, the petitioner, Mid Continent Steel & Wire, Inc., withdrew its request for review of 16 of the companies on December 12, 2016. No other parties had requested a review of these companies. Thus, in response to the petitioner's timely filed withdrawal request and pursuant to 19

<sup>1</sup> *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

<sup>2</sup> *See* Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part: Certain Steel Nails from Malaysia; 2014-2016", dated concurrently with this notice.

<sup>18</sup> *See* 19 CFR 351.309(d)(1).

<sup>19</sup> *See* 19 CFR 351.309(c)(2) and (d)(2).

<sup>20</sup> *Id.*

<sup>21</sup> *See* 19 CFR 351.303.

<sup>22</sup> *See* section 751(a)(3)(A) of the Act.

CFR 351.213(d)(1), we are rescinding this administrative review for the following companies: Apex Container Line (M) Sdn Bhd; Astrotech Steels Private Ltd.; C.H. Robinson Freight Services Ltd.; Caribbean International Co. Ltd.; Chia Pao Metal Co. Ltd.; Expeditors (Malaysia) Sdn Bhd; Flyjac Logistics Private Ltd.; Hanjin Logistics India Private Ltd.; Hecny Transportation (M) Sdn Bhd; Honour Lane Logistics Sdn Bhd; Jinhai Hardware Co. Ltd.; Nora Freight Services Sdn Bhd; Orient Containers Sdn Bhd; Orient Star Transport Sdn Bhd; Sino Connections Logistics Co. Ltd.; and Swift Freight Private Ltd.

### Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying the preliminary results, see the Preliminary Decision Memorandum.

### Preliminary Results of Review

We preliminarily determine that, for the period December 29, 2014, through June 30, 2016, the following weighted-average dumping margins exist:<sup>3 4</sup>

Producer or exporter	Weighted-average dumping margin (percent)
Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd. ....	1.03
Region International Co. Ltd. and Region System Sdn. Bhd	2.56
Tag Fasteners Sdn. Bhd. ....	1.80

### Disclosure and Public Comment

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.<sup>5</sup> Interested parties may submit case briefs not later than 30 days after the date of publication of this notice in the **Federal**

**Register**.<sup>6</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.<sup>7</sup> Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>8</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>9</sup>

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.<sup>10</sup> Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.<sup>11</sup> Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

### Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.<sup>12</sup> If a respondent's weighted-average dumping margin is not zero or *de minimis* in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the period of review to each importer to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the

respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping for the examined sales made during the period of review to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*, i.e., "{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis*, no antidumping duties will be assessed."<sup>13</sup>

Regarding entries of subject merchandise during the period of review that were produced by Inmax and Region and for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate of 2.66 percent, as established in the less-than-fair-value investigation of the order, if there is no rate for the intermediate company(ies) involved in the transaction.<sup>14</sup> For a full discussion of this matter, see *Assessment Policy Notice*.<sup>15</sup>

For the firms covered by this review, we intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. For the non-reviewed firms for which we are rescinding this administrative review, the Department intends to instruct CBP 15 days after publication of these preliminary results of review to assess antidumping duties at rates equal to the rates of cash deposits for estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period December 29, 2014, through June 30,

<sup>13</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

<sup>14</sup> See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015).

<sup>15</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

<sup>3</sup> The Department has preliminarily determined to collapse, and treat as a single entity, affiliates Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd. (collectively, Inmax) and Region International Co. Ltd. and Region System Sdn. Bhd. (collectively Region). For our analysis of the collapsing criteria, see the company-specific analysis memorandum, dated concurrently with this notice.

<sup>4</sup> As we did not have a publicly-ranked total U.S. sales value for Region for the period December 29, 2014, through June 30, 2016, to calculate a weighted-average dumping margin for the non-examined company, Tag Fasteners, the rate applied to this company is a simple average of the weighted-average dumping margins calculated for Inmax and Region.

<sup>5</sup> See 19 CFR 351.224(b).

<sup>6</sup> See 19 CFR 351.309(c)(1)(ii).

<sup>7</sup> See 19 CFR 351.309(d)(1).

<sup>8</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>9</sup> See 19 CFR 351.303.

<sup>10</sup> See 19 CFR 351.310(c).

<sup>11</sup> See 19 CFR 351.310(d).

<sup>12</sup> See 19 CFR 351.212(b)(1).



2016, in accordance with 19 CFR 351.212(c)(2).

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Inmax and Region and other companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 2.66 percent. These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 28, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### Scope of the Order

The merchandise covered by the antidumping duty order is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>16</sup> Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of this order are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the

<sup>16</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (e.g., furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this order are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 7806.00.80.00, 7318.29.00.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### Appendix II

#### List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Partial Rescission of Administrative Review
4. Company Not Selected for Individual Examination
5. Collapsing of Affiliated Companies
6. Date of Sale
7. Comparisons to Normal Value
  - A. Determination of Comparison Method



- B. Results of the Differential Pricing Analysis
- 8. Product Comparisons
- 9. Export Price
- 10. Normal Value
  - A. Home Market Viability as Comparison Market
  - B. Level of Trade
  - C. Sales to Affiliates
  - D. Cost of Production
    - 1. Calculation of Cost of Production
    - 2. Test of Comparison Market Sales Prices
    - 3. Results of the Cost of Production Test
  - E. Calculation of Normal Value Based on Comparison Market Prices
  - F. Price-to-Constructed Value Comparison
- 11. Currency Conversion
- 12. Recommendation

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-854]

#### **Certain Steel Nails From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016**

**AGENCY:** Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel nails from Taiwan. The period of review (POR) is May 20, 2015, through June 30, 2016. This review covers Bonuts Logistics Co., LLC (Bonuts); Hor Liang Industrial Corp.; Romp Coil Nails Industries Inc.; PT Enterprise, Inc. (PT Enterprise) and its affiliated producer Pro-Team Coil Nail Enterprise, Inc. (Pro-Team) (collectively, PT); and Unicatch Industrial Co. Ltd. and its affiliated U.S. reseller, TC International, Inc. (collectively, Unicatch). The Department preliminarily determines that Bonuts, Hor Liang Industrial Corp., Romp Coil Nails Industries Inc., PT, and Unicatch made U.S. sales of subject merchandise below normal value. The preliminary results are listed below in the section titled "Preliminary Results of Review." We are rescinding the review with respect to 79 companies for which the request for review was timely withdrawn. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Scott Hoefke or Victoria Cho, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230; telephone: (202) 482-4947 or (202) 482-5075, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Scope of the Order<sup>1</sup>**

The merchandise covered by this order is certain steel nails. The certain steel nails subject to the order are currently classifiable under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to these orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

The full description of the scope of the order is contained in the memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2015-2016" (Preliminary Decision Memorandum), which is hereby adopted by this notice. The written description of the scope of the order is dispositive.

##### **Methodology**

For Unicatch, the Department has conducted this review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). Normal value (NV) is calculated in accordance with section 773(e) of the Act. Constructed export price or export price is calculated in accordance with section 773(a) of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B-8024 of the main Department of Commerce building. In

addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

#### **Application of Facts Available and Adverse Facts Available**

We preliminarily determine that PT and Bonuts failed to cooperate to the best of their ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to section 776(a)-(b) of the Act. For a full description of the methodology and rationale underlying our conclusions, see the Preliminary Decision Memorandum.

#### **Rate for Non-Examined Companies**

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, we calculated a weighted-average dumping margin for Unicatch that is not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, the Department assigned Hor Liang Industrial Corp., and Romp Coil Nails Industries Inc. a margin of 34.20 percent, which is Unicatch's calculated weighted-average dumping margin.

#### **Partial Rescission of Review**

On December 12, 2016, Mid Continent Steel & Wire, Inc. (Mid Continent), a domestic producer and interested party, timely withdrew its review requests for

<sup>1</sup> See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*the Order*).

certain companies.<sup>2</sup> Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. For a full description of the methodology and rationale underlying our conclusions, see the Preliminary Decision Memorandum.

### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist:

Producer/exporter	Dumping margin (percent)
Bonuts Logistics Co., LLC .....	78.17
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc .....	78.17
Unicatch Industrial Co. Ltd .....	34.20
Non-Examined Companies <sup>3</sup> .....	34.20

<sup>2</sup> ABF Freight International Private Ltd., Astrotech Steels Private Ltd., Air Sea Transport, Inc., Basso Industry Corporation, Apex Maritime (Fuzhou) Co., Ltd., Blue Moon Logistics Private Ltd., Apex Maritime (Shenzhen) Co., Ltd., Aplus Pneumatic Corp., Bollore Logistics (Taiwan) Ltd., Bollore Logistics (Vietnam) Co. Ltd., Dahmay Logistics Private Ltd., C.H. Robinson Freight Services, DIFS Logistics Co. Ltd., Certified Products Taiwan Inc., Eagre International Trade Co., Ltd., Challenge Industrial Co., Ltd., Easylink Industrial Co., Ltd., Chia Pao Metal Co. Ltd., Encore Green Co., Ltd., China Staple Enterprise Corporation, Everise Global Logistics Co., Ltd., Chite Enterprises Co., Ltd., Faithful Engineering Products Co. Ltd., Crown Run Industrial Corp., Fastenal Asia Pacific Ltd., Freight Links International Ltd., Honour Lane Logistics Co., Ltd., General Merchandise Consolidators, Ginfu World Co. Ltd., HWA Hsing Screw Industry Co. Ltd., Gloex Company, Inmax Industries Sdn Bhd, Hariharan Logistics, Integral Building Products Inc., Hecny Group, Interactive Corporation, Hi-Sharp Industrial Corp. Ltd., Jade Shuttle Enterprise Co., Ltd., Home Value Co., Ltd., Jau Yeou Industry Co. Ltd., Jinhai Hardware Co., Ltd., Nora Freight Services Sdn Bhd, K Win Fasteners Inc., Orient Express Container Co., Ltd., King Freight International Corporation, Orient Star Transport International Ltd., Kuan Hsin Screw Industry Co., Ltd., Pacific Concord International Ltd., Liang Chyuan Industrial Co., Ltd., Patek Tool Co., Ltd., Linkwell Industry Co. Ltd., Pneumax Corp., ML Global Ltd., President Industrial Inc., Maytrans International Corp., Newrex Screw Corporation, Qi Ding Enterprise Co. Ltd., T.H.I. Logistics Co. Ltd., Quick Advance Inc., Tag Fasteners Sdn Bhd, Ray Fu Enterprise Co., Ltd., Taiwan Wakisangyo Co. Ltd., Region System Sdn Bhd, Tianjin Jinchi Metal Products Co. Ltd., TK Logistics International Co. Ltd., Schenker (H.K.) Ltd. Taiwan Branch, Topocean Consolidation Service Ltd., Shang Jeng Nail Co., Ltd., Transworld Transportation Co. Ltd., Suntex Industries Co., Ltd., Unicom International Tower, Trim International Inc., Tsi-Translink (Taiwan) Co. Ltd., WTA International Co. Ltd., U-Can-Do Hardware Corp., Yeun Chang Hardware Tool Co. Ltd., United Nail Products Co. Ltd., Yu Tai World Co., Ltd., UPS Supply Chain Solutions, and Zon Mon Co. Ltd.

### Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.<sup>4</sup> Interested parties may submit cases briefs no later than 30 days after the date of publication of this notice.<sup>5</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the due date for filing case briefs.<sup>6</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>7</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>8</sup> In order to be properly filed, ACCESS must successfully receive an electronically filed document in its entirety by 5 p.m. Eastern Time.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.<sup>9</sup> Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Unless otherwise extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad*

*valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).<sup>10</sup> Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.<sup>11</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (i.e., 0.50 percent), the Department will instruct CBP to collect the appropriate duties at the time of liquidation.<sup>12</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>13</sup>

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the "Rates for Non-Examined Companies" section, above.

Consistent with the Department's assessment practice, for entries of subject merchandise during the POR produced by Bonuts, PT, Unicatch, or the non-examined companies, for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>14</sup>

For the firms covered by this review, we intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. For the non-reviewed firms for which we are rescinding this administrative review, the Department intends to instruct CBP 15 days after publication of these preliminary results of review to assess antidumping duties at rates equal to the rates of cash deposits for estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period May 20,

<sup>3</sup> The non-examined companies are Hor Liang Industrial Corp., and Romp Coil Nails Industries Inc.

<sup>4</sup> See 19 CFR 351.224(b).

<sup>5</sup> See 19 CFR 351.309(c)(1)(ii).

<sup>6</sup> See 19 CFR 351.309(d).

<sup>7</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>8</sup> See 19 CFR 351.303.

<sup>9</sup> See 19 CFR 351.310(c).

<sup>10</sup> See 19 CFR 351.212(b)(1).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See 19 CFR 351.106(c)(2).

<sup>14</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

2015, through June 30, 2016, in accordance with 19 CFR 351.212(c)(2).

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Bonuts, PT, and Unicatch will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.24 percent, the all-others rate in the LTFV investigation.<sup>15</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notifications

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Affiliation and Collapsing
6. Adverse Facts Available
7. Comparisons to Normal Value
8. Date of Sale
9. Export Price and Constructed Export Price
10. Normal Value
11. Currency Conversion
12. Recommendation

[FR Doc. 2017-16498 Filed 8-4-17; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-985]

#### Xanthan Gum From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on xanthan gum from the People's Republic of China (PRC). The period of review (POR) is July 1, 2015, through June 30, 2016. The review covers two mandatory respondents, Fufeng (which includes Neimenggu Fufeng Biotechnologies Co., Ltd. (a.k.a., Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Xinjiang Fufeng Biotechnologies Co., Ltd., and Shandong Fufeng Fermentation Co., Ltd.) and Deosen (which includes Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd.).

We preliminarily determine that sales of subject merchandise by Deosen have been made at prices below normal value (NV), and that sales of subject merchandise by Fufeng have not. We also preliminarily grant separate rates to four exporter groupings listed in the "Preliminary Results of Review" section of this notice and included Hebei Xinhe Biochemical Co., Ltd. as part of the PRC-

wide entity. Finally, we preliminarily find that A.H.A. International Co., Ltd. (AHA) made no shipments of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 7, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Brian Smith, Jesus Saenz, or Michael Bowen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1766, (202) 482-8184, and (202) 482-0768, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Scope of the Order

The product covered by the order includes dry xanthan gum, whether or not coated or blended with other products. Xanthan gum is included in this order regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

Merchandise covered by the scope of the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.<sup>1</sup>

##### Preliminary Determination of No Shipments

On October 19, 2016, AHA submitted a timely filed certification that it had no exports, sales, or entries of subject merchandise during the POR.<sup>2</sup> Based on an analysis of U.S. Customs and Border Protection (CBP) information and AHA's no shipment certification, the Department preliminarily determines that AHA had no shipments, and, therefore, no reviewable transactions,

<sup>1</sup> For a complete description of the Scope of the Order, see "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Xanthan Gum from the People's Republic of China; 2015-2016," (Preliminary Decision Memorandum) from James P. Maeder, Jr., Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, dated concurrently with, and hereby adopted by, this notice.

<sup>2</sup> See letter from AHA, "Xanthan Gum from the People's Republic of China Separate Rate Certification of AHA," dated October 19, 2016.

<sup>15</sup> See *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015).

during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in non-market economy (NME) cases, the Department is not rescinding this administrative review with respect to AHA, for which it has preliminarily found no shipments during the POR, but intends to complete the review, and issue appropriate instructions to CBP based on the final results of the review.<sup>3</sup>

#### Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). We calculated, where applicable, export price and constructed export price for the mandatory respondents, Deosen and Fufeng, in accordance with section 772 of the Act. Because the PRC is a NME within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, Room B8024 of

the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is provided as an appendix to this notice.

#### Verification

As provided in sections 782(i)(3)(A) and (B) of the Act, we conducted verification of the information upon which we relied in determining the preliminary results of review with respect to the two mandatory respondents, Deosen and Fufeng.

#### Preliminary Results of Review

Based on record evidence, the Department preliminarily continues to treat Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. as a single entity for AD purposes. Furthermore, based on record evidence, the Department preliminarily finds that Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co. Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. are affiliated and should be treated as a single entity for AD purposes. For additional information, *see* the Preliminary Decision Memorandum. The Department preliminarily finds that one company, Hebei Xinhe Biochemical

Co., Ltd., for which a review was requested, did not establish eligibility for a separate rate because it failed to provide a separate rate certification. As such, we preliminarily find that this company is part of the PRC-wide entity.<sup>4</sup>

In addition to the mandatory respondents, we preliminarily determine that CP Kelco (Shandong) Biological Company Limited, Jianlong Biotechnology Co., Ltd. (a.k.a. Inner Mongolia Jianlong Biochemical Co., Ltd.), Meihua Group International Trading (Hong Kong) Limited/Xinjiang Meihua Amino Acid Co., Ltd./Langfang Meihua Bio-Technology Co., Ltd. ("collectively" Meihua), and Shanghai Smart Chemicals Co., Ltd., also demonstrated their eligibility for a separate rate in this administrative review. Consistent with the Department's practice, we preliminarily assigned these companies a rate equal to the weighted-average dumping margin assigned to Deosen in this review. We preliminarily determine that Deosen did not cooperate to the best of its ability in this administrative review with regards to a portion of its sales to AHA, and as a result, we have based its dumping margin for those sales on adverse facts available for these preliminary results.<sup>5</sup> For companies subject to this review that have established their eligibility for a separate rate, the Department preliminarily determines that the following weighted-average dumping margins exist for the period July 1, 2015, through June 30, 2016:

Exporters	Weighted-average dumping margin (percent)
Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd .....	9.30
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd. ....	0.00
CP Kelco (Shandong) Biological Company Limited* .....	9.30
Jianlong Biotechnology Co., Ltd. (aka Inner Mongolia Jianlong Biochemical Co., Ltd.)* .....	9.30
Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Bio-Technology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd.* .....	9.30
Shanghai Smart Chemicals Co., Ltd. (Shanghai Smart)* .....	9.30

\* This company demonstrated that it qualified for a separate rate in this administrative review. Consistent with the Department's practice, we preliminarily assigned this company a weighted-average dumping margin of 9.30 percent—the rate calculated for the mandatory respondent Deosen in this review.<sup>6</sup> *See* the Preliminary Decision Memorandum.

<sup>3</sup> *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694–95 (October 24, 2011) (NME AD Assessment) and the "Assessment Rates" section, below.

<sup>4</sup> Because no interested party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter

conditionally subject to administrative reviews, we did not conduct a review of the PRC-wide entity. Thus, the rate for the PRC-wide entity is not subject to change as a result of this review and remains at 154.07 percent. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the*

*Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969–70 (November 4, 2013).

<sup>5</sup> *See* Preliminary Decision Memorandum.

<sup>6</sup> *See Stainless Steel Bar From India: Final Results of the Antidumping Duty Administrative Review*, 77 FR 39467 (July 3, 2012) and accompanying Issues and Decision Memorandum at 12.

## Disclosure

The Department intends to disclose to the parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.<sup>7</sup> Rebuttals to case briefs may be filed no later than five days after the written comments are filed, and all rebuttal comments must be limited to comments raised in the case briefs.<sup>8</sup>

## Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of these preliminary results, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>9</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal**

**Register**, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.<sup>10</sup> The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of the final results of this review.

For each individually-examined respondent in this review, if we continue to calculate a weighted-average dumping margin that is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).<sup>11</sup> We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis*. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>12</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents that were not selected for individual examination in this administrative review but qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to Deosen in the final results of this review.<sup>13</sup>

For entries that were not reported in the U.S. sales databases submitted by the companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if we

<sup>10</sup> See 19 CFR 351.212(b)(1).

<sup>11</sup> In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

<sup>12</sup> See 19 CFR 351.106(c)(2).

<sup>13</sup> See *Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015*, 81 FR 29528 (May 12, 2016) and accompanying Decision Memorandum at 10–11; unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments: 2014–2015*, 81 FR 54042 (August 15, 2016).

continue to find that AHA had no shipments of the subject merchandise, any suspended entries of subject merchandise from AHA will be liquidated at the PRC-wide rate.<sup>14</sup>

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis*, then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 154.07 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

<sup>14</sup> For a full discussion of this practice, see *NME AD Assessment*.

<sup>7</sup> See 19 CFR 351.309(c).

<sup>8</sup> See 19 CFR 351.309(d).

<sup>9</sup> See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

Dated: July 31, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

# **Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**

- I. Summary
- II. Background
- III. Period of Review
- IV. Scope of the Order
- V. Selection of Respondents
- VI. Preliminary Determination of No Shipments
- VII. Application of Partial Adverse Facts Available and Selection of Adverse Facts Available Rate
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  - A. Non-Market Economy Country Status
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  - C. Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies
  - D. Surrogate Country and Surrogate Value Data
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  - F. Comparisons to Normal Value
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**BILLING CODE 3510-DS-P**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-580-874]

### **Certain Steel Nails From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014–2016**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel nails (steel nails) from the Republic of

Korea (Korea). The period of review (POR) is December 29, 2014, through June 30, 2016. This administrative review covers three exporters of the subject merchandise, including two mandatory respondents, Daejin Steel Co. (Daejin) and Korea Wire Co., Ltd. (Kowire). The Department preliminarily determines Daejin sold subject merchandise at less than normal value during the POR and that Kowire did not. The Department is rescinding this administrative review, in part, with respect to 208 companies, based on the timely withdrawal of Mid Continent Steel & Wire, Inc.'s (the petitioner) request for administrative review. Interested parties are invited to comment on these preliminary results. **DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Robert Galantucci or Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2923 or (202) 482-4852, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On July 5, 2016, the Department notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in July 2016, including the antidumping duty (AD) order on steel nails from Korea.<sup>1</sup> The Department received timely requests from Je-il Wire Production Co., Ltd. (Je-il),<sup>2</sup> Daejin,<sup>3</sup> Kowire,<sup>4</sup> and the petitioner<sup>5</sup> to conduct an administrative review of certain exporters during the POR. On September 12, 2016, the Department published a notice initiating an AD administrative review of steel nails from Korea covering 211 companies for the POR.<sup>6</sup>

In the *Initiation Notice*, the Department indicated that, in the event

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 43584 (July 5, 2016).

<sup>2</sup> See Letter from Je-il, "Certain Steel Nails from the Republic of Korea: Request for Administrative Review," dated July 22, 2016.

<sup>3</sup> See Letter from Daejin, "Certain Steel Nails from the Republic of Korea: Request for Administrative Review," dated July 28, 2016.

<sup>4</sup> See Letter from Kowire, "Steel Nails from the Republic of Korea: Request for Administrative Review," dated July 29, 2016.

<sup>5</sup> See Letter from the petitioner, "Certain Steel Nails from the Republic of Korea: Request for Administrative Reviews," dated August 1, 2016.

<sup>6</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

that we limited the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based on U.S. Customers and Border Protection (CBP) entry data.<sup>7</sup> On November 7, 2016, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.<sup>8</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters of steel nails from Korea by U.S. entry volume during the POR (*i.e.*, Daejin and Kowire).<sup>9</sup> Accordingly, we issued the AD questionnaire to Daejin and Kowire, the two companies selected as mandatory respondents.<sup>10</sup> On December 12, 2016, the petitioner timely withdrew its request for administrative review pursuant to 19 CFR 351.213(d)(1) of all previously-identified producers and exporters of steel nails from Korea except for Je-il, Daejin, and Kowire.<sup>11</sup>

#### **Partial Rescission of Administrative Review**

The Department received timely requests to conduct an administrative review of certain exporters covering the POR. Because the petitioner timely withdrew its requests for review of all of the companies listed in the *Initiation Notice*, with the exception of Daejin, Je-il, and Kowire, we are rescinding the administrative review with respect to the remaining 208 companies on which we initiated this review pursuant to 19 CFR 351.213(d)(1). For a list of the 208 companies for which we are rescinding this review, see Appendix II to this notice. Accordingly, the remaining three companies subject to the instant review are: Daejin, Je-il, and Kowire.

<sup>7</sup> *Id.*

<sup>8</sup> See Memorandum, "Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Respondent Selection," dated November 7, 2016 (Respondent Selection Memorandum).

<sup>9</sup> See Respondent Selection Memorandum.

<sup>10</sup> See Department Letter, "Administrative Review of Certain Steel Nails from Korea: Antidumping Duty Questionnaire," dated November 8, 2016.

<sup>11</sup> See Letter from the petitioner, "Certain Steel Nails from the Republic of Korea: Withdrawal of Request for Administrative Review," dated December 12, 2016.

### Scope of the Order

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>12</sup> Merchandise covered by the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a full description of the scope of the order, see the Preliminary Decision Memorandum.<sup>13</sup>

### Allegations of a Particular Market Situation

On June 8, 2017, the petitioner submitted a “particular market situation” allegation with respect to the production of steel nails in Korea.<sup>14</sup> In light of the timing of the filing of this allegation, the Department did not have the opportunity to consider it for purposes of these preliminary results. We intend to issue our preliminary analysis of the PMS allegation so that parties will have an opportunity to

<sup>12</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

<sup>13</sup> For a complete description of the scope of the products under review, see Memorandum, “Decision Memorandum for Preliminary Results of the 2014–2016 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea,” dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum). The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

<sup>14</sup> See Letter from the petitioner, “Certain Steel Nails from Korea: Particular Market Situation Allegation,” dated June 8, 2017 (PMS Allegation).

comment prior to the issuance of the final results of this review.

### Methodology

The Department is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.<sup>15</sup> A list of topics included in the Preliminary Decision Memorandum is included as an Appendix I to this notice.

### Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period December 29, 2014 through June 30, 2016:

Exporter/producer	Weighted-average dumping margin (percent)
Daejin Steel Co .....	2.14
Korea Wire Co., Ltd .....	* 0.16
Je-il Wire Production Co., Ltd ....	<sup>16</sup> 2.14

\* (*de minimis*).

### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (i.e., 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer’s examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).<sup>17</sup> For entries of subject merchandise during the POR produced

<sup>15</sup> See Preliminary Decision Memorandum.

<sup>16</sup> This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. See section 735(c)(5)(A) of the Act.

<sup>17</sup> In these preliminary results, the Department applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction.<sup>18</sup> We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent’s weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the 208 companies for which this review is rescinded, antidumping duties will be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

### Cash Deposit Requirement

The following deposit requirements will be effective upon publication of the notice of the final results of administrative review for all shipments of steel nails from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the

<sup>18</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).



manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.80 percent *ad valorem*, the all-others rate established in the less-than-fair value investigation.<sup>19</sup>

### Disclosure and Public Comment

The Department intends to disclose the calculations used in our analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.<sup>20</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.<sup>21</sup> Executive summaries should be limited to five pages total, including footnotes.<sup>22</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>23</sup>

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of

publication of these preliminary results in the **Federal Register**, unless otherwise extended.<sup>24</sup>

### Notification To Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification To Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 31, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission In Part
- V. Non-Selected Respondent Rate
- VI. Affiliation
- VII. Discussion of the Methodology
  - A. Determination of Comparison Method
  - B. Results of Differential Pricing Analysis
  - C. Product Comparisons
  - D. Date of Sale
  - E. Export Price
  - F. Normal Value
  - G. Currency Conversions
- VIII. Recommendation

### Appendix II

1. AOT Japan Ltd
2. ABF Freight International Private Ltd
3. ABN Fasteners Co. Ltd.
4. Ace Logistics Co., Ltd. (Tianjin Branch)
5. Air Sea Transport Inc.
6. Air Sea Worldwide Logistics Ltd.
7. Alpha Forwarding Co. Ltd.
8. Apex Maritime Co., Inc. (Dalian)
9. Apex Maritime Co. Ltd. (Korea)
10. Apex Maritime (Tianjin) Co., Ltd.
11. Astrotech Steels Private Limited
12. Baoding Jiebooshun Trading Corp. Ltd.
13. Beijing Jin Heung Co. Ltd.
14. Beijing Kang Jie Kong Int'l Cargo Co. Ltd.
15. Beijing Qin Li Jeff Trading Co., Ltd.
16. Ben Line Agencies—Tianjin
17. Berry Clark & Co. Ltd.
18. Bipex Co., Ltd.

19. BK Fasteners Co.
20. Blu Logistics (China) Co., Ltd.
21. Bollore Logistics China Co., Ltd
22. Bolung International Trading Co., Ltd.
23. Bon Voyage Logistics Inc.
24. Brilliant Group Logistics Corp.
25. BYK Lines, Incorporated
26. C.H. Robinson Freight Services Ltd.
27. Caesar International Logistics Co. Ltd.
28. Cangzhou Xinqiao Int'l Trade Co. Ltd.
29. Capital Freight Management Inc.
30. Casia Global Logistics Co Ltd
31. Certified Products International Inc.
32. China Abrasives Industry
33. China Staple Enterprise (Tianjin) Co. Ltd
34. CJ Korea Express Co., Ltd.
35. CMS Logistics, Inc.
36. CN Worldwide International Freight
37. Concord Freight System Co., Ltd.
38. Consolidated Shipping Services L.L.C.
39. Cyber Express Corporation
40. D&F Material Products Ltd
41. DCS Dah Star Logistics Co., Ltd.
42. Dahnay Logistics Private Ltd.
43. Daijin Express Co., Ltd.
44. Dingzhou Derunda Material and Trade Co., Ltd.
45. Deugro Emirates Shipping Co.
46. Dezhou Hualude Hardware Products Co., Ltd.
47. Eco Steel Co., Ltd.
48. Duo-Fast Korea Co., Ltd.
49. Easylink Industrial Co., Ltd.
50. Family Express Company Limited
51. Ejem Brothers Limited
52. Euroline Global Co., Ltd.
53. G Link Express Logistics (Korea) Ltd
54. FG International Logistic Ltd
55. Foshan Sanden Enterprise Co., Ltd.
56. Grandlink Logistics Co., Ltd.
57. Global Container Line, Inc.
58. Goodgood Manufacturers
59. Hanbit Logistics Co., Ltd.
60. Grubville Enterprises Corporation
61. Han Duk Industrial Co., Ltd.
62. Hariharan Logistics
63. Hanjin Logistics India Private Ltd.
64. Hanmi Staple Co., Ltd.
65. Hecny Shipping Ltd.
66. Hebei Minmetals Co., Ltd.
67. Hecny Transportation Ltd.
68. High Link Line Inc.
69. Hellmann Worldwide Logistics Inc.
70. Hengtou Metal Products Co Ltd
71. Huanghua Lianqing Hardware Products
72. Hongyi HK Hardware Products Co.
73. Honour Lane Logistics Sdn Bhd
74. Huanghua Yiqihe Imp. & Exp. Co, Ltd.
75. Huanghua Ruisheng Hardware Products
76. Huanghua Yingjin Hardware Products Co., Ltd.
77. I B International Co., Ltd.
78. Huasheng Yida Tianjin International Trading Co. Ltd.
79. Huazan Metal Wire Mesh Manufacture Co. Ltd.
80. International Maritime and Aviation LLC
81. Inmax Industries Sdn Bhd
82. Inno International
83. Jas Forwarding (Korea) Co. Ltd.
84. Ivk Manuport Logistics LLC
85. J Consol Line Co., Ltd.
86. Jiangsu Globe Logistics Co., Ltd.
87. Jail Tacker Co., Ltd.
88. Jinhai Hardware Co., Ltd.
89. Jinheung Steel Corporation

<sup>19</sup> See *Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015).

<sup>20</sup> See 19 CFR 351.309(d)(1).

<sup>21</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>22</sup> *Id.*

<sup>23</sup> See 19 CFR 351.303.

<sup>24</sup> See section 751(a)(3)(A) of the Act.



90. Jiaozuo Deled Hardware Manufacturing Co., Ltd.
91. Jinzhou Yihe Metal Products Co., Ltd.
92. Joo Sung Sea Air Co., Ltd.
93. Jinsco International Corp.
94. Kase Logistics International
95. Kasy Logistics (Tianjin) Co., Ltd.
96. K Logistics Corp. (Korea)
97. King Shipping Company
98. Kongo Special Nail Mfg. Co., Ltd.
99. King Freight International Corp.
100. Koram Steel Co., Ltd.
101. Laapraa Shipping Private Ltd.
102. Koram Inc.
103. Kyungjoo Sejung Corporation
104. Linyi Flying Arrow Imp. & Exp. Ltd.
105. Kuehne Nagel Ltd. (Tianjin Branch)
106. Linyi Double Moon Hardware Products Co., Ltd.
107. Mingguang Ruifeng Hardware Products Co., Ltd.
108. Liaocheng Minghui Hardware Products
109. Micasa Corporation Osaka Japan
110. Neo Gls
111. Liladhar Pasoo India Logistics Private Ltd.
112. Nanjing Caiqing Hardware Co., Ltd.
113. Ocean King Industries Limited
114. Nailtech Co. Ltd.
115. Nippon Seisen Co., Ltd.
116. Oman Fasteners LLC
117. Ningbo Port Southeast Logistics Group Co., Ltd.
118. OEC Logistics Co., Ltd.
119. Overseas Distribution Services Inc.
120. OEC Freight Worldwide Korea Co. Ltd.
121. Orient Express Container Co., Ltd.
122. Panalpina World Transport (PRC) Ltd.
123. On Time Worldwide Logistics Ltd.
124. Pacific Global Logistics Co., Ltd.
125. Prime Global Products Inc.
126. Overseas International Steel Industry
127. Peace Korea Co., Ltd.
128. Pudong Prime International Logistics, Inc.
129. Paslode Fasteners (Shanghai) Co. Ltd.
130. Promising Way (Hong Kong) Limited
131. Qingdao Golden Sunshine Metal Products Co., Ltd.
132. Prime Shipping International Inc.
133. Qingdao Gold-Dragon Co. Ltd.
134. Qingdao Mst Industry and Commerce Co., Ltd.
135. Qingdao D&L Group Ltd.
136. Qingdao Meijialucky Industry and Commerce Co., Ltd.
137. Ramses Logistics Company Limited
138. Qingdao Master Metal Products Co. Ltd.
139. Qingdao Uni-Trend International Limited
140. Romp Coil Nail Industries Inc.
141. Qingdao Tiger Hardware Co., Ltd.
142. Ricoh Logistics System Co., Ltd.
143. SDC International Australia PTY Ltd.
144. Regency Global Logistics (Shanghai) Co., Ltd.
145. Scanwell Container Line Ltd.
146. Sea Master Logistics Ltd.
147. Romp (Tianjin) Hardware Co. Ltd.
148. SDV Vietnam Co. Ltd.
149. Shandong Oriental Cherry Hardware Group
150. SDV PRC International Freight Forwarding Co. Ltd.
151. Shandong Liaocheng Minghua Metal PR
152. Shanghai Kaijun Logistics Co., Ltd.
153. Sejung (China) Sea & Air Co., Ltd.
154. Shanghai Jade Shuttle Hardware Tools Co., Ltd.
155. Shanxi Hairui Trade Co., Ltd.
156. Shanghai Curvet Hardware Products Co., Ltd.
157. Shanghai Pudong International Transportation
158. Shenzhen Syntrans International Logistics Co., Ltd.
159. Shanghai Pinnacle International Trading Co., Ltd.
160. Shanxi Tianli Industries Co., Ltd.
161. Sirius Global Logistics Co. Ltd.
162. Shanxi Pioneer Hardware Industry Co., Ltd.
163. Shipping Imperial Co., Ltd.
164. Suntec Industries Co., Ltd.
165. Shine International Transportation Ltd.
166. S-Mart (Tianjin) Technology Development Co., Ltd.
167. T.H.I. Group (Shanghai) Ltd.
168. Smart Logistics Co., Ltd.
169. Swift Freight (India) Pvt Ltd.
170. Tianjin Bluekin Industries Limited
171. Sunworld Industry Company Limited
172. The Stanley Works (Langfang) Fastening System Co., Ltd.
173. Tianjin Huixinshangmao Co. Ltd.
174. TCW Line Co., Ltd.
175. Tianjin Hongli Qiangsheng Imp. Exp.
176. Tianjin Juxiang Metal Products Co. Ltd.
177. Tianjin Coways Metal Products Co.
178. Tianjin Jinghai County Hongli Industry
179. Tianjin M&C Electronics Co., Ltd.
180. Tianjin Jinchu Metal Products Co., Ltd.
181. Tianjin Lituo Imp. Exp. Co. Ltd.
182. Tianjin Zhonglian Times Technology
183. Tianjin Lianda Group Co., Ltd.
184. Tianjin Zhonglian Metals Ware Co. Ltd.
185. Top Ocean Consolidated Service Ltd.
186. Tianjin Universal Machinery Imp. & Exp. Corp.
187. Top Ocean Korea Limited
188. Trans Wagon Int'l Co., Ltd.
189. Toll Global Forwarding (Beijing) Ltd.
190. Trans Knights, Inc.
191. United Nail Products Co., Ltd.
192. TP Steel Co. Ltd.
193. Unicorn (Tianjin) Fasteners Co., Ltd.
194. V-Line Shipping Co., Ltd.
195. Translink Shipping, Inc.
196. UPS SCS (China) Limited
197. Weifang United Laisee International Trade Co. Ltd.
198. Universal Sea & Air Co., Ltd.
199. Wah Shing Trading Flat RM G
200. Xuzhou CIP International Group Co. Ltd.
201. W&K Corporation Limited
202. Xinjiayuan Trading Co., Limited
203. You-One Fastening Systems
204. Xi'an Metals and Minerals Imp. Exp. Co.
205. Youngwoo Fasteners Co., Ltd.
206. Yicheng Logistics
207. Zhejiang Best Nail Industry Co., Ltd.
208. Zen Continental (Tianjin) Enterprises

[FR Doc. 2017-16551 Filed 8-4-17; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-831]

### Fresh Garlic From the People's Republic of China: Final Results of Fourth Expedited Sunset Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of this sunset review, the Department finds that revocation of the antidumping duty order on fresh garlic would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margin likely to prevail is indicated in the "Final Results of Sunset Review" section of this notice.

**DATES:** Applicable August 7, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202-482-5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 3, 2017, the Department published the notice of initiation of the fourth sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> The Department received a notice of intent to participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley Garlic, Inc.; and Vessey and Company, Inc. (collectively, the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers and packagers of fresh garlic and a trade association whose members produce and process a domestic like product in the United States. The Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR

<sup>1</sup> See *Initiation of Five-Year ("Sunset") Reviews*, 82 FR 16159 (April 3, 2017).

351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order.

### Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0703.20.0005, 0703.20.0015, 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700 and 2005.99.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

### Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum,<sup>2</sup> the likelihood of

continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. Parties can find a complete discussion of all issues raised in this review and corresponding recommendations in the Issues and Decision Memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov/login.aspx> in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

### Final Results of Review

We determine that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of dumping. We determine that the weighted-average dumping margin likely to prevail is a margin up to 376.67 percent.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: August 1, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017-16575 Filed 8-4-17; 8:45 am]

**BILLING CODE 3510-DS-P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

**DATES:** Comments must be received on or before September 3, 2017.

**ADDRESSES:** Committee for Purchase from People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

#### Products

*NSN(s)—Product Name(s):*

7125-00-NIB-0006—Cabinet, Storage, Blow-Molded, 46", Black  
7125-00-NIB-0007—Cabinet, Storage, Blow-Molded, 46", Platinum  
7125-00-NIB-0008—Cabinet, Storage, Blow-Molded, 66", Black  
7125-00-NIB-0009—Cabinet, Storage, Blow-Molded, 66", Platinum  
7125-00-NIB-0010—Cabinet, Storage, Blow-Molded, 72", Black  
7125-00-NIB-0011—Cabinet, Storage, Blow-Molded, 72", Platinum  
7125-00-NIB-0012—Shelf, Open Storage, 4 Shelves, 54", Platinum

<sup>2</sup> See "Issues and Decision Memorandum: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, to James Maeder, Senior Director performing the duties of the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, which is dated concurrently with this **Federal Register** notice (Issues and Decision Memorandum).

7125-00-NIB-0013—Shelf, Open Storage,  
4 Shelves, 54", Charcoal  
7125-00-NIB-0014—Shelf, Open Storage,  
4 Shelves, 54", Black  
7125-00-NIB-0015—Shelf, Open Storage,  
5 Shelves, 74", Platinum  
7125-00-NIB-0016—Shelf, Open Storage,  
5 Shelves, 74", Charcoal  
7125-00-NIB-0017—Shelf, Open Storage,  
5 Shelves, 74", Black

*Mandatory for:* Broad Government  
Requirement

*Mandatory Source(s) of Supply:* MidWest  
Enterprises for the Blind, Inc.,  
Kalamazoo, MI

*Contracting Activity:* General Services  
Administration, Philadelphia, PA

*Distribution:* B-List

### Deletions

The following products and services  
are proposed for deletion from the  
Procurement List:

#### Products

##### NSN(s)—Product Name(s):

6920-01-NSH-9023—Target  
6920-01-NSH-9025—Target  
6920-01-NSH-9026—Target  
6920-01-NSH-9027—Target  
6920-01-NSH-9028—Target  
6920-01-NSH-9029—Target  
6920-01-NSH-9031—Target  
6920-01-NSH-9035—Target  
6920-01-NSH-9036—Target  
6920-01-NSH-9030—Target

*Mandatory Source(s) of Supply:* Walterboro  
Vocational Rehabilitation Center,  
Walterboro, SC

*Contracting Activity:* W6QM MICC—FT  
STEWART, Fort Stewart, GA

##### NSN(s)—Product Name(s):

8410-01-474-6871—Slacks, Dress, Belted,  
Navy, Women's, White, 20WR  
8410-01-474-6872—Slacks, Dress, Belted,  
Navy, Women's, White, 20WR

*Mandatory Source(s) of Supply:* Goodwill  
Industries of South Florida, Inc., Miami,  
FL

*Contracting Activity:* Defense Logistics  
Agency Troop Support

##### NSN(s)—Product Name(s):

8405-00-NSH-1415—XXX Large Tall  
8405-00-NSH-1407—Medium Tall  
8405-00-NSH-1409—Large Tall  
8405-00-NSH-1411—X Large Tall  
8405-00-NSH-1413—XX Large Tall

*Mandatory Source(s) of Supply:* Human  
Technologies Corporation, Utica, NY

*Contracting Activity:* USDA APHIS MRPBS,  
Minneapolis, MN

##### NSN(s)—Product Name(s):

8410-00-NSH-6328—size 2  
8410-00-NSH-6357—XXXX Large  
8410-00-NSH-6383—XXXX Large Tall  
8410-00-NSH-6364—XXXX Large  
8410-00-NSH-6390—XXXX Large Tall  
8410-00-NSH-6403—XXXX Large  
8410-00-NSH-6404—XXXX Large Tall  
8405-00-NSH-1332—Medium Tall  
8405-00-NSH-1333—Large Tall  
8405-00-NSH-1334—X Large Tall  
8405-00-NSH-1335—XX Large Tall  
8405-00-NSH-1336—XXX Large Tall  
8405-00-NSH-1337—Medium Tall

8405-00-NSH-1338—Large Tall  
8405-00-NSH-1339—X Large Tall  
8405-00-NSH-1340—XX Large Tall  
8405-00-NSH-1341—XXX Large Tall  
8405-00-NSH-1342—Medium Tall  
8405-00-NSH-1387—Medium Tall  
8405-00-NSH-1389—Large Tall  
8405-00-NSH-1391—X Large Tall  
8405-00-NSH-1393—XX Large Tall  
8405-00-NSH-1395—XXX Large Tall  
8405-00-NSH-1397—Medium Tall  
8405-00-NSH-1399—Large Tall  
8405-00-NSH-1401—X Large Tall  
8405-00-NSH-1403—XX Large Tall  
8405-00-NSH-1405—XXX Large Tall  
8405-00-NSH-1417—Medium Tall  
8405-00-NSH-1419—Large Tall  
8405-00-NSH-1421—X Large Tall  
8405-00-NSH-1423—XX Large Tall  
8405-00-NSH-1425—XXX Large Tall

*Mandatory Source(s) of Supply:* Human  
Technologies Corporation, Utica, NY  
*Contracting Activity:* AMS 31C3,  
Washington, DC

#### Services

*Service Type:* Janitorial/Custodial Service

*Mandatory for:* NAVFAC Southwest, Marine  
Corps Reserve Center Bakersfield, CA

*Mandatory Source(s) of Supply:* Bakersfield  
Arc, Inc., Bakersfield, CA

*Contracting Activity:* DEPT OF THE NAVY,  
NAVFAC SOUTHWEST

*Service Type:* Janitorial/Custodial Service

*Mandatory for:* Naval & Marine Corps  
Reserve Center, Mobile, AL

*Mandatory Source(s) of Supply:* GWI  
Services, Inc., Mobile, AL

*Contracting Activity:* DEPT OF THE NAVY,  
NAVY FACILITIES ENGINEERING  
COMMAND

*Service Type:* Grounds Maintenance Service

*Mandatory for:* Naval Air Station, Joint  
Reserve Base, Fort Worth, TX

*Mandatory Source(s) of Supply:* Trace, Inc.,  
Boise, ID

*Contracting Activity:* DEPT OF THE NAVY,  
US FLEET FORCES COMMAND

*Service Type:* Facilities Maintenance Service

*Mandatory for:* Greater Louisville  
Technology Park: Port Hueneme  
Detachment & Navy Caretaker Site Off,  
Louisville, KY

*Mandatory Source(s) of Supply:* Employment  
Source, Inc., Fayetteville, NC

*Contracting Activity:* DEPT OF THE NAVY,  
NAVAL FAC ENGINEERING CMD  
MIDWEST

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017-16472 Filed 8-4-17; 8:45 am]

**BILLING CODE 6353-01-P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List: Addition

**AGENCY:** Committee for Purchase from  
People Who are Blind or Severely  
Disabled.

**ACTION:** Addition to the Procurement  
List.

**SUMMARY:** This action adds a service to  
the Procurement List that will be  
provided by a nonprofit agency  
employing persons who are blind or  
have other severe disabilities.

**DATES:** *Date added to the Procurement  
List:* September 3, 2017.

**ADDRESSES:** Committee for Purchase  
from People Who are Blind or Severely  
Disabled, 1401 S. Clark Street, Suite  
715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:**  
Amy B. Jensen, Telephone: (703) 603-  
7740, Fax: (703) 603-0655, or email  
[CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

#### SUPPLEMENTARY INFORMATION:

##### Addition

On 6/30/2017 (82 FR 29852), the  
Committee for Purchase from People  
Who are Blind or Severely Disabled  
published notice of proposed addition  
to the Procurement List.

After consideration of the material  
presented to it concerning capability of  
qualified nonprofit agency to provide  
the service and impact of the addition  
on the current or most recent contractor,  
the Committee has determined that the  
service listed below is suitable for  
procurement by the Federal Government  
under 41 U.S.C. 8501-8506 and 41 CFR  
51-2.4.

##### Regulatory Flexibility Act Certification

I certify that the following action will  
not have a significant impact on a  
substantial number of small entities.  
The major factors considered for this  
certification were:

1. The action will not result in any  
additional reporting, recordkeeping or  
other compliance requirements for small  
entities other than the small  
organization that will provide the  
service to the Government.
2. The action will result in  
authorizing small entities to provide the  
service to the Government.
3. There are no known regulatory  
alternatives which would accomplish  
the objectives of the Javits-Wagner-  
O'Day Act (41 U.S.C. 8501-8506) in  
connection with the service proposed  
for addition to the Procurement List.

##### End of Certification

Accordingly, the following service is  
added to the Procurement List:

##### Service

*Service Type:* Base Supply Center Service  
*Mandatory for:* US Air Force, Robins Air  
Force Base, 375 Perry Street, Robins  
AFB, GA

*Mandatory Source(s) of Supply:* Alabama

Industries for the Blind, Talladega, AL  
*Contracting Activity:* Dept of the Air Force,  
 FA8501 AFSC PZIO.

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017-16473 Filed 8-4-17; 8:45 am]

**BILLING CODE 6353-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel will take place.

**DATES:** Open to the public Thursday, September 21, 2017 from 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** The address of the open meeting is the Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Edward Norton, 703-681-2890 (Voice), 703-681-1940 (Facsimile), [edward.c.norton2.mil@mail.mil](mailto:edward.c.norton2.mil@mail.mil) (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042-5101. Web site: <http://www.health.mil/About-MHS/Other-MHS-Organizations/Beneficiary-Advisory-Panel>. The most up-to-date changes to the meeting agenda can be found on the Web site.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.140 and 102-3.150.

**Administrative Work Meeting:** Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 8:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102-3.160, the Administrative Work Meeting will be closed to the public.

**Purpose of the Meeting:** Summary: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel). Purpose: The Panel will review and comment on recommendations made to the Director of the Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

**Agenda:** Meeting Agenda: 1. Sign-In 2. Welcome and Opening Remarks 3. Public Citizen Comments 4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item) a. HIV Antiretroviral Agents. b. Basal Insulin Agents. c. Hereditary Angioedema Agents. 5. Newly Approved Drugs Review. 6. Pertinent Utilization Management Issues. 7. Panel Discussions and Vote.

**Meeting Accessibility:** Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

**Written Statements:** Pursuant to 41 CFR 102-3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at <http://facadatabase.gov/>. Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

**Public Comments:** In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a

"Sign-Up Roster" available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

Dated: August 2, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017-16587 Filed 8-4-17; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2016-OS-0069]

#### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, DoD.

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 6, 2017.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at [Oira\\_submission@omb.eop.gov](mailto:Oira_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571-372-0493, or [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

#### SUPPLEMENTARY INFORMATION:

**Title, Associated Form and OMB Number:** Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Control Number 0790-0004.

**Type of Request:** Reinstatement with change.

**Number of Respondents:** 29.

*Responses per Respondent:* 1.  
*Annual Responses:* 29.  
*Average Burden per Response:* 40 hours.  
*Annual Burden Hours:* 1,160 hours.  
*Needs and Uses:* The information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the use of EDC property for seven years.  
*Affected Public:* State, local, or tribal governments.  
*Frequency:* Annually.  
*Respondent's Obligation:* Voluntary.  
*OMB Desk Officer:* Ms. Jasmeet Seehra.  
You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make

these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350-3100.

Dated: August 2, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017-16567 Filed 8-4-17; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 17-31]

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification.

**FOR FURTHER INFORMATION CONTACT:**

Pamela Young, (703) 697-9107, [pamela.a.young14.civ@mail.mil](mailto:pamela.a.young14.civ@mail.mil) or Kathy Valadez, (703) 697-9217, [kathy.a.valadez.civ@mail.mil](mailto:kathy.a.valadez.civ@mail.mil); DSCA/DSA-RAN.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17-31 with attached Policy Justification.

Dated: August 2, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001-06-P**



## DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-5408

JUL 10 2017

The Honorable Paul D. Ryan  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-31, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost \$50 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. W. Rixey", is written over a light blue horizontal line.

J. W. Rixey  
Vice Admiral, USN  
Director

Enclosures:

1. Transmittal
2. Policy Justification



Transmittal No. 17–31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$49 million
Other .....	\$ 1 million
Total .....	\$50 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

*Major Defense Equipment (MDE):*

Six thousand thirty (6,030) rounds of M865 120mm Target Practice Cone Stabilized Discarding Sabot–Tracer (TPCSDS–T) Tank Projectiles

Eight thousand six hundred ten (8,610) rounds of M1002 120mm Target Practice Multipurpose Tracer (TPMP–T) Tank Projectiles

*Non-MDE includes:* Also included are U.S. Government technical assistance, technical data, and other related elements of logistical and program support.

(iv) *Military Department:* Army (XX–B–UJL)

(v) *Prior Related Cases, if any:* AT–B–UGR

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* July 10, 2017

\* As defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### *Australia—120MM Tank Ammunition and Related Support Services*

The Government of Australia has requested the possible sale of six thousand thirty (6,030) rounds of M865 120mm Target Practice Cone Stabilized Discarding Sabot–Tracer (TPCSDS–T) Tank Projectiles and eight thousand six hundred ten (8,610) rounds of M1002 120mm Target Practice Multipurpose Tracer (TPMP–T) Tank Projectiles. Also included are U.S. Government technical services, technical data, and other related elements of logistical and program support. The total estimated program cost is \$50 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major contributor to political stability, security, and economic development in the Western Pacific. Australia is an important Major non-NATO Ally and partner that contributes significantly to peacekeeping and humanitarian operations around the world. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability.

The proposed sale of 120mm tank ammunition will improve Australia's capability to meet out-year operational readiness and training requirements. Australia will use this ammunition to help sustain necessary training levels for its tank operators. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This requirement will be provided from U.S. Army inventory. There are no

known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2017–16603 Filed 8–4–17; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 17–23]

### Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Arms sales notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification.

#### FOR FURTHER INFORMATION CONTACT:

Pamela Young, (703) 697–9107, [pamela.a.young14.civ@mail.mil](mailto:pamela.a.young14.civ@mail.mil) or Kathy Valadez, (703) 697–9217, [kathy.a.valadez.civ@mail.mil](mailto:kathy.a.valadez.civ@mail.mil); DSCA/DSA–RAN.

**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–23 with attached Policy Justification and Sensitivity of Technology.

Dated: August 2, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*



## DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-5408

JUL 10 2017

The Honorable Paul D. Ryan  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-23, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Kingdom for defense articles and services estimated to cost \$1.035 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Rixey".

J. W. Rixey  
Vice Admiral, USN  
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology





## BILLING CODE 5001-06-C

Transmittal No. 17-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Kingdom

(ii) *Total Estimated Value:*

Major Defense Equipment*	..	\$887 million
Other .....		\$148 million

Total .....	\$1.035 billion
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(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

*Major Defense Equipment (MDE):* Two thousand seven hundred forty-seven (2,747) Joint Light Tactical Vehicles (JLTV)

*Non-MDE:* Also included with this request are baseline integration kits, basic issue item kits, B-kit armor, engine arctic kits, fording kits, run-flat kits, spare tire kits, silent watch kits, power expansion kits cargo cover kits, maintainer and operator training, U.S. government technical assistance and logistics support services, and other related elements of logistics and program support.

(iv) *Military Department:* Army

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* July 10, 2017

\* As defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

## United Kingdom—Joint Light Tactical Vehicles (JLTV) and Accessories

The Government of the United Kingdom (UK) has requested a possible sale of up to two thousand seven hundred forty-seven (2,747) Joint Light Tactical Vehicles (JLTV). This possible sale also includes baseline integration kits, basic issue item kits, B-kit armor, engine arctic kits, fording kits, run-flat kits, spare tire kits, silent watch kits, power expansion kits cargo cover kits, maintainer and operator training, U.S. government technical assistance and logistics support services, and other related elements of logistics and program support. Total estimated cost is \$1.035 billion.

This proposed sale supports the foreign policy and national security policies of the United States by helping to improve the security of a NATO ally

which has been, and continues to be, an important partner on critical foreign policy and defense issues.

The proposed sale will help improve the UK's Light Tactical Vehicle Fleet and enhance its ability to meet current and future threats. The UK will have no difficulty absorbing this equipment into its armed forces.

The proposed sale will not alter the basic military balance in the region.

The principal contractor of this sale will be Oshkosh Defense, LLC, Oshkosh, Wisconsin. The procured items will require minimum contractor support until the foreign customer can eventually transition to internal organic support. There is no known offset agreement associated with this proposed sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. This sale will involve the release of sensitive technology to the Government of the United Kingdom. The Joint Light Tactical Vehicle platform is classified as SECRET. The Joint Light Tactical Vehicle fleet will incorporate ballistic armor kits for protection from improvised explosive devices.

2. Sensitive and/or classified (up to SECRET) elements of the proposed Joint Light Tactical Vehicle include hardware and accessories, components and associated software: baseline integration kits, basic issue items, ballistic-kit armor, engine arctic kits, fording kits, run-flat kits, silent watch energy kits, power expansion kits and cargo covering kits.

3. A determination has been made that the United Kingdom can provide substantially the same degree of protection for this technology as the U.S. Government. This proposed sale is necessary in furtherance of U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of the UK.

[FR Doc. 2017-16595 Filed 8-4-17; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

## Department of the Army, U.S. Army Corps of Engineers

**Notice of Availability of The Great Lakes and Mississippi River Interbasin Study—Brandon Road Draft Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) has posted *The Great Lakes and Mississippi River Interbasin Study—Brandon Road Draft Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois* (GLMRIS-Brandon Road Report) on <http://glmr.is.anl.gov>. The GLMRIS—Brandon Road Report presents a plan to address the transfer of aquatic nuisance species (ANS) from the Mississippi River Basin to the Great Lakes Basin through an aquatic connection in the Chicago Area Waterway System. The purpose of this study is to evaluate structural and nonstructural options and technologies near the Brandon Road Lock and Dam to prevent the upstream transfer of ANS. USACE analyzed and evaluated available controls to address ANS of concern and formulated alternatives specifically for the Brandon Road site. USACE also evaluated the potential impacts of the alternatives and ways to minimize such impacts.

USACE conducted the GLMRIS-Brandon Road Study in consultation with other Federal agencies, Native American tribes, state agencies, local governments, non-governmental organizations, and industry.

**DATES:** There will be a 45-day public review period for comments on this document beginning Monday August 7, 2017, through Thursday September 21, 2017. Comments will be accepted through the GLMRIS project Web site at <http://glmr.is.anl.gov>, by letter and at public meetings. Public meeting dates and locations are to be determined. See **SUPPLEMENTARY INFORMATION** section for instructions on how to submit public comments.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or questions about GLMRIS-Brandon Road, please contact Andrew Leichty, Program Manager, by mail: U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building (ATTN: Leichty), P.O. Box 2004, Rock Island, IL 61204-2004, by phone: 309-794-5399; or by email: [Andrew.L.Leichty@usace.army.mil](mailto:Andrew.L.Leichty@usace.army.mil).

For media inquiries, please contact Allen Marshall, District Spokesperson, by mail: U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building (ATTN: Marshall), P.O. Box 2004, Rock Island, IL 61204-2004, by phone: 309-794-5204; or by email: [Allen.A.Marshall@usace.army.mil](mailto:Allen.A.Marshall@usace.army.mil).

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

The GLMRIS authority directed USACE to identify the range of options and technologies available to prevent the spread of ANS between the Great Lakes and Mississippi River Basins through the Chicago Sanitary and Ship Canal and other aquatic pathways. The goal of the GLMRIS-Brandon Road Study is to prevent the upstream transfer of ANS while minimizing impacts to existing waterways uses and users. USACE conducted the GLMRIS-Brandon Road Study in consultation with other Federal agencies, Native American tribes, state agencies, local governments, non-governmental organizations, and industry.

##### 2. The GLMRIS-Brandon Road Report

The GLMRIS-Brandon Road Report identified six potential alternatives including no new action (continuing current efforts), a nonstructural alternative, three technology alternatives using an electric barrier and/or complex noise, and lock closure. The effectiveness of these alternatives was considered against the three different modes of ANS transport—swimming, floating, and hitchhiking. Selection of the Tentatively Selected Plan (TSP) required careful evaluation of each alternative's 1. reduction in the probability of establishment in the Great Lakes Basin; 2. life safety risk; 3. system performance robustness; and 4. costs, which include construction, mitigation, operation and maintenance, repair, replacement and rehabilitation, and navigation impacts. The evaluation also included careful consideration of cost effectiveness and incremental cost analyses; significance of the Great Lakes Basin ecosystem; and acceptability, completeness, efficiency, and effectiveness. The GLMRIS-Brandon Road Report identifies potential adverse impacts that alternatives may have on existing uses and users of the waterways. Based on the results of the evaluation and comparison of the alternatives, the TSP is the Technology Alternative—Complex Noise with Electric Barrier, which includes the following measures: Nonstructural measures, complex noise, water jets, engineered channel, electric barrier,

flushing lock, boat ramps, and mooring area.

##### 3. Public Participation

USACE will accept comments related to the GLMRIS-Brandon Road Report until September 21, 2017. Comments may be submitted in the following ways:

- *GLMRIS Project Web site:* Use the web comment function found at <http://glmr.is.anl.gov>.
- *Mail:* Send comments to U.S. Army Corps of Engineers, Chicago District, ATTN: GLMRIS-Brandon Road Comments, 231 S. LaSalle St., Suite 1500, Chicago, IL 60604. Comments must be postmarked by September 21, 2017.
- *Public Meetings:* Public meeting dates, times and locations are to be determined; USACE asks those wanting to make oral comments to register on the GLMRIS project Web site at <http://glmr.is.anl.gov>. Each individual wishing to make oral comments shall be given three (3) minutes, and a stenographer will document oral comments.

Public meetings will begin with a brief presentation regarding the study and the formulated alternatives followed by an oral comment period. During each meeting, USACE personnel will also collect written comments on comment cards. Additional information about public meetings including dates, times and locations will be posted on the GLMRIS project Web site at <http://glmr.is.anl.gov> as soon as that information is available.

Comments, including the names and addresses of those that comment, received during the comment period will be posted on the GLMRIS project Web site. Comments submitted anonymously will be accepted, considered, and posted. Commenters may indicate that they do not wish to have their name or other personal information made available on the Web site. However, USACE cannot guarantee that information withheld from the Web site will be maintained as confidential. Persons requesting confidentially should be aware that, under the Freedom of Information Act, confidentiality may be granted in only limited circumstances.

##### 4. Authority

This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061(d), Public Law 110-114, and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, as amended.

Dated: July 28, 2017.

**Dennis W. Hamilton,**

*Chief, Programs and Project Management Division.*

[FR Doc. 2017-16597 Filed 8-4-17; 8:45 am]

BILLING CODE 3720-58-P

#### DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0075]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; U.S. Department of Education Supplemental Information for the SF-424 Form

**AGENCY:** Office of the Secretary (OS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before September 6, 2017.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2017-ICCD-0075. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216-32, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Alfreida Pettiford, 202-245-6110.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize

the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* U.S. Department of Education Supplemental Information for the SF-424 form.

*OMB Control Number:* 1894-0007.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 8,078.

*Total Estimated Number of Annual Burden Hours:* 2,666.

*Abstract:* The U.S. Department of Education Supplemental Information form for the SF-424 is used together with the SF-424, Application for Federal Assistance. ED made a policy decision to switch to the SF-424 in keeping with Federal-wide forms standardization and streamlining efforts, especially with widespread agency use of *Grants.gov*.

The questions on this form deal with the following areas: Project Director identifying and contact information; Novice Applicants; and Human Subjects Research. The ED supplemental information form could be used with any of the SF-424 forms in the SF-424 forms family, as applicable.

Dated: August 2, 2017.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017-16542 Filed 8-4-17; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Notice of Availability of Guidance and Application for Hydroelectric Incentive Program

**AGENCY:** Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of availability of guidance and open application period.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of updated guidance for the Energy Policy Act of 2005 program. The guidance describes the hydroelectric incentive payment requirements and explains the type of information that owners or authorized operators of qualified hydroelectric facilities must provide DOE when applying for hydroelectric incentive payments. This incentive is available for electric energy generated and sold for a specified 10-year period as authorized under the Energy Policy Act of 2005. In Congressional appropriations for Federal fiscal year 2017, DOE received funds to support this hydroelectric incentive program. At this time, DOE is only accepting applications from owners and authorized operators of qualified hydroelectric facilities for hydroelectricity generated and sold in calendar year 2016.

**DATES:** DOE is currently accepting applications from August 7, 2017 through September 6, 2017. Applications must be sent to [hydroincentive@ee.doe.gov](mailto:hydroincentive@ee.doe.gov) by midnight EDT, September 6, 2017, or they will not be considered timely filed for calendar year 2016 incentive payments.

**ADDRESSES:** DOE's guidance is available at: <https://energy.gov/eere/water/downloads/federal-register-notice-epact-2005-section-242-hydroelectric-incentive-0>. Written correspondence may be sent to the Office of Energy Efficiency and Renewable Energy (EE-4W), by email at [hydroincentive@ee.doe.gov](mailto:hydroincentive@ee.doe.gov).

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Mr. Timothy Welch, Office of Energy Efficiency and Renewable Energy (EE-4W), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0121, (202) 586-7055 or by email at [hydroincentive@ee.doe.gov](mailto:hydroincentive@ee.doe.gov). *Electronic communications are recommended for correspondence and required for submission of application information.*

**SUPPLEMENTARY INFORMATION:** In the Energy Policy Act of 2005 (EPAct 2005; Pub. L. 109-58), Congress established a new program to support the expansion of hydropower energy development at existing dams and impoundments through an incentive payment procedure. Under Section 242 of EPAct 2005, the Secretary of Energy is directed to provide incentive payments to the owner or authorized operator of qualified hydroelectric facilities for energy generated and sold by a qualified hydroelectric facility for a specified 10-year period (See 42 U.S.C. 15881). The Consolidated Appropriations Act, 2017 authorized funding for the Section 242 program for conventional hydropower under EPAct 2005. In FY2017 DOE allocated \$6.6M for this purpose.

Recently DOE made a minor update to its Guidance for the Energy Policy Act of 2005 Section 242. The final guidance is available at: <https://energy.gov/eere/water/downloads/federal-register-notice-epact-2005-section-242-hydroelectric-incentive-0>. Each application will be reviewed based on the Guidance. DOE has updated its Guidance by requesting a statement from the owner or authorized operator indicating what the incentive has been used for in previous years and, if awarded, what the incentive will be used for in the upcoming year. The response will not affect the eligibility decision or the amount of the incentive to be received. DOE notes that applicants that received incentive payments for prior calendar years must submit a full application addressing all eligibility requirements for hydroelectricity generated and sold in calendar year 2016. As authorized under Section 242 of EPAct 2005, and as explained in the Guidance, DOE also notes that it will only accept applications from qualified hydroelectric facilities that began operations at an existing dam or conduit during the inclusive period beginning October 1, 2005, and ending on September 30, 2015. Therefore, although DOE is accepting applications for full calendar year 2016 production, the qualified hydroelectric facility must have begun operations starting October 1, 2005, through September 30, 2015, for DOE to consider the application.

When submitting information to DOE for Section 242 program, it is recommended that applicants carefully read and review the completed content of the Guidance for this process. When reviewing applications, DOE may corroborate the information provided with information that DOE finds through FERC e-filings, contact with power off-taker, and other due diligence measure carried out by reviewing

officials. DOE may require the applicant to conduct and submit an independent audit at its own expense, or DOE may conduct an audit to verify the number of kilowatt-hours claimed to have been generated and sold by the qualified hydroelectric facility and for which an incentive payment has been requested or made.

Issued in Washington, DC, on August 1, 2017.

**Timothy Unruh,**

*Deputy Assistant Secretary for Renewable Power, Energy Efficiency and Renewable Energy.*

[FR Doc. 2017-16559 Filed 8-4-17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER17-2201-000]

#### Exelon FitzPatrick, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Exelon FitzPatrick, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 1, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017-16547 Filed 8-4-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17-145-000.

*Applicants:* Cimarron Windpower II, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Cimarron Windpower II, LLC.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5117.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* EC17-146-000.

*Applicants:* Dighton Power, LLC, Milford Power, LLC, Marco DM Holdings, L.L.C.

*Description:* Joint Application for Authorization under Section 203 of the Federal Power Act of Dighton Power, LLC, et al.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5176.

*Comments Due:* 5 p.m. ET 8/22/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17-2214-000.

*Applicants:* Great Valley Solar 2, LLC.

*Description:* Initial rate filing: Great Valley Solar 2, LLC Certificate of Concurrence to Shared Facilities Agmt to be effective 10/1/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5106.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17-2215-000.

*Applicants:* Great Valley Solar 2, LLC.

*Description:* Initial rate filing: Great Valley Solar 2, LLC Certificate of Concurrence to LGIA Co-Tenancy Agmt to be effective 10/1/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5108.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17-2216-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2014 Southwestern Power Administration Amendatory Agreement Seventh Extension to be effective 10/1/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5157.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17-2217-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of Original Service Agreement No. 4695, Queue No. AB2-061 to be effective 7/11/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5172.

*Comments Due:* 5 p.m. ET 8/22/17.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC17-5-000.

*Applicants:* Aspa Energias Renovables, S.L.U.

*Description:* Self-Certification of FC of Aspa Energias Renovables, S.L.U., et al.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801-5148.

*Comments Due:* 5 p.m. ET 8/22/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 1, 2017.  
**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*  
 [FR Doc. 2017-16546 Filed 8-4-17; 8:45 am]  
**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ID-8260-000]

#### Dosch, Theodore A.; Notice of Filing

Take notice that on August 1, 2017, Theodore A. Dosch, submitted for filing an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b), and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on August 22, 2017.

Dated: August 1, 2017.  
**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*  
 [FR Doc. 2017-16548 Filed 8-4-17; 8:45 am]  
**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17-143-000.  
*Applicants:* Great Valley Solar 1, LLC, Great Valley Solar 2, LLC.

*Description:* Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act of Great Valley Solar 1, LLC, et al.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5316.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* EC17-144-000.  
*Applicants:* Noble Americas Gas & Power Corp., Mercuria Energy America, Inc.

*Description:* Joint Application for Authorization under Section 203 of the Federal Power Act of Noble Americas Gas & Power Corp., et al.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5318.  
*Comments Due:* 5 p.m. ET 8/21/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2906-010; ER10-2908-010; ER10-2910-010; ER11-4666-003; ER11-4667-003; ER12-295-002; ER11-4669-004; ER11-4670-004; ER12-709-003.

*Applicants:* Morgan Stanley Capitol Group Inc., MS Solar Solutions Corp., Power Contract Financing II, L.L.C., NaturEner Glacier Wind Energy 1, LLC, NaturEner Glacier Wind Energy 2, LLC, NaturEner Rim Rock Wind Energy, LLC, Naturener Montana Wind Energy, LLC, NaturEner Power Watch, LLC, NaturEner Wind Watch, LLC.

*Description:* Notice of Change in Status of the Morgan Stanley Public Utilities, et al.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5325.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* ER17-1357-001.  
*Applicants:* Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

*Description:* Report Filing: Errata to June 27 Filing (Loss Factors) to be effective N/A.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5138.

*Comments Due:* 5 p.m. ET 8/21/17.  
*Docket Numbers:* ER17-2201-000.  
*Applicants:* Exelon FitzPatrick, LLC.  
*Description:* Baseline eTariff Filing: Exelon Fitzpatrick MBR Application to be effective 9/29/2017.  
*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5242.  
*Comments Due:* 5 p.m. ET 8/21/17.  
*Docket Numbers:* ER17-2202-000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Queue Nos. Y3-051/Z1-058/Z1-059/Z2-002, Third Rev. Service Agreement No. 3669 to be effective 8/29/2016.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5244.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* ER17-2203-000.  
*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) Rate Filing: Mead Service Agreement Nos. 218 and 335 to be effective 7/1/2017.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5290.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* ER17-2204-000.  
*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: 7-31-17 Unexecuted Agreement, City and County of San Francisco WDT (SA 275) to be effective 8/1/2017.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5293.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* ER17-2205-000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Interconnection Service Agreement No. 4761; Queue NQ147 to be effective 8/1/2017.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5299.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* ER17-2206-000.  
*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: SWE (Hartford) NITSA Amendment Filing to be effective 7/1/2017.

*Filed Date:* 7/31/17.  
*Accession Number:* 20170731-5310.  
*Comments Due:* 5 p.m. ET 8/21/17.

*Docket Numbers:* ER17-2207-000.  
*Applicants:* Entergy Texas, Inc.

*Description:* § 205(d) Rate Filing: Coordination Services Agreement to be effective 8/1/2017.

*Filed Date:* 8/1/17.  
*Accession Number:* 20170801-5004.  
*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17-2208-000.  
*Applicants:* Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy

Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc.

*Description:* § 205(d) Rate Filing: Entergy OpCos Reactive Power Update to be effective 8/1/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5005.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2209–000.

*Applicants:* Duke Energy Progress, LLC.

*Description:* § 205(d) Rate Filing: Filing of Vepco Facilities Agreement RS 203 to be effective 10/2/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5025.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2209–000.

*Applicants:* Duke Energy Progress, LLC.

*Description:* Report Filing: Refund Report Vepco Facilities Agreement to be effective N/A.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5026.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2210–000.

*Applicants:* Duke Energy Carolinas, LLC.

*Description:* § 205(d) Rate Filing: SCE&G Metering Agreement RS 349 to be effective 10/2/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5046.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2211–000.

*Applicants:* Duke Energy Ohio, Inc.  
*Description:* § 205(d) Rate Filing: Hamilton Joint Use Pole Agreement to be effective 10/2/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5071.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2212–000.

*Applicants:* Duke Energy Ohio, Inc.

*Description:* § 205(d) Rate Filing: Bio Energy GIA Filing to be effective 10/2/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5093.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2212–000.

*Applicants:* Duke Energy Ohio, Inc.

*Description:* Report Filing: Bio Energy Refund Report to be effective N/A.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5098.

*Comments Due:* 5 p.m. ET 8/22/17.

*Docket Numbers:* ER17–2213–000.

*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: NMPC 205 CRA No. 2357 with NYSEG for Silver Creek Substation to be effective 5/3/2017.

*Filed Date:* 8/1/17.

*Accession Number:* 20170801–5097.

*Comments Due:* 5 p.m. ET 8/22/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–16545 Filed 8–4–17; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to

further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before October 6, 2017.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email: [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–XXXX.

*Title:* Transition from TTY to Real-Time Text Technology, CG Docket No. 16–145 and GN Docket No. 15–178.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents and Responses:* 967 respondents; 5,557 responses.

*Estimated Time per Response:* 0.2 hours (12 minutes) to 60 hours.

*Frequency of Response:* Annual, ongoing, one-time, and semiannual

reporting requirements; recordkeeping requirement.

**Obligation To Respond:** Required to obtain or retain benefit. The statutory authority can be found at sections 4(i), 225, 255, 301, 303(r), 316, 403, 715, and 716 of the Communications Act of 1934, as amended, and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. 154(i), 225, 255, 301, 303(r), 316, 403, 615c, 616, 617; Public Law 111–260, 106, 124 Stat. 2751, 2763 (2010).

**Total Annual Burden:** 127,360 hours.

**Total Annual Cost:** No cost.

**Nature and Extent of Confidentiality:**

There is no need for confidentiality with this collection of information.

**Privacy Impact Assessment:** This information collection does not affect individuals or households; therefore, the Privacy Act is not impacted.

**Needs and Uses:** TTY technology provides the primary means for people with disabilities to send and receive text communications over the public switched telephone network (PSTN). Changes to communications networks, particularly ongoing technology transitions from circuit switched to IP-based networks and from copper to wireless and fiber infrastructure, have affected the quality and utility of TTY technology, prompting discussions on transitioning to an alternative advanced communications technology for text communications. Accordingly, on December 16, 2016, the Commission released *Transition from TTY to Real-Time Text Technology*, Report and Order, document FCC 16–169, 82 FR 7699, January 23, 2017, amending its rules that govern the obligations of wireless service providers and manufacturers to support TTY technology to permit such providers and manufacturers to provide support for real-time text (RTT) over wireless IP-based networks to facilitate an effective and seamless transition to RTT in lieu of continuing to support TTY technology.

In document FCC 16–169, the Commission adopted measures requiring the following:

(a) Each wireless provider and manufacturer that voluntarily transitions from TTY technology to RTT over wireless IP-based networks and services is encouraged to develop consumer and education efforts that include (1) the development and dissemination of educational materials that contain information pertinent to the nature, purpose, and timelines of the RTT transition; (2) Internet postings, in an accessible format, of information about the TTY to RTT transition on the Web sites of covered entities; (3) the

creation of a telephone hotline and an online interactive and accessible service that can answer consumer questions about RTT; and (4) appropriate training of staff to effectively respond to consumer questions. All consumer outreach and education should be provided in accessible formats including, but not limited to, large print, Braille, videos in American Sign Language and that are captioned and video described, emails to consumers who have opted to receive notices in this manner, and printed materials. Service providers and manufacturers are also encouraged to coordinate with consumer, public safety, and industry stakeholders to develop and distribute education and outreach materials. The information will inform consumers of alternative accessible technology available to replace TTY technology that may no longer be available to the consumer through their provider or on their device.

(b) Each wireless provider that requested or will request and receives a waiver of the requirement to support TTY technology over wireless IP-based networks and services must apprise their customers, through effective and accessible channels of communication, that (1) until TTY is sunset, TTY technology will not be supported for calls to 911 services over IP-based wireless services, and (2) there are alternative PSTN-based and IP-based accessibility solutions for people with disabilities to reach 911 services. These notices must be developed in coordination with PSAPs and national consumer organizations, and include a listing of text-based alternatives to 911, including, but not limited to, TTY capability over the PSTN, various forms of PSTN-based and IP-based TRS, and text-to-911 (where available). The notices will inform consumers on the loss of the use of TTY for completing 911 calls over the provider's network and alert them to alternatives service for which TTY may be used.

(c) Once every six months, each wireless provider that requests and receives a waiver of the requirement to support TTY technology must file a report with the Commission and inform its customers regarding its progress toward and the status of the availability of new IP-based accessibility solutions. Such reports must include (1) information on the interoperability of the provider's selected accessibility solution with the technologies deployed or to be deployed by other carriers and service providers, (2) the backward compatibility of such solution with TTYs, (3) a showing of the provider's efforts to ensure delivery of 911 calls to

the appropriate PSAP, (4) a description of any obstacles incurred towards achieving interoperability and steps taken to overcome such obstacles, and (5) an estimated timetable for the deployment of accessibility solutions. The information will inform consumers of the progress towards the availability of alternative accessible means to replace TTY, and the Commission will be able to evaluate the reports to determine if any changes to the waivers are warranted or of any impediments to progress that it may be in a position to resolve.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2017–16566 Filed 8–4–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1015]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with



a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before October 6, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060-1015.

*Title:* Section 15.525—Ultra Wideband Transmission Systems Operating Under Part 15.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; Not-for-profit institutions.

*Number of Respondents and Responses:* 50 respondents; 50 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* One-time, on occasion reporting requirements; and third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a. and 549.

*Total Annual Burden:* 50 hours.

*Total Annual Cost:* \$2,500.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* This collection will be submitted as an extension after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance. The Commission rules in 47 CFR part 15, § 15.525 requires operators of the Ultra Wideband (UWB) imaging systems to coordinate with other Federal agencies via the FCC and to obtain approval before the UWB equipment may be used. Initial operation in a particular area may not commence until the information has been sent to the Commission and no prior approval is required. The information will be used to coordinate the operation of the Ultra Wideband transmission systems in order to avoid interference with sensitive U.S. government radio systems. The UWB operators will be required to provide name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA) under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications. Since initial operation in a particular area does not require approval from the FCC to operate the equipment.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2017-16565 Filed 8-4-17; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0906 and 3060-xxxx]

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general

public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before September 6, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas.A.Fraser@omb.eop.gov](mailto:Nicholas.A.Fraser@omb.eop.gov); and to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov). Include in the comments the OMB control number as shown in the

**SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A



copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–0906.

*Title:* Annual DTV Ancillary/ Supplemental Services Report for DTV Stations, FCC Form 317; 47 CFR 73.624(g).

*Form Number:* FCC Form 317.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 9,391 respondents, 18,782 responses.

*Frequency of Response:* Recordkeeping requirement, annual reporting requirement.

*Obligation To Respond:* Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 336 and 403 of the Communications Act of 1934, as amended.

*Estimated Time per Response:* 2–4 hours.

*Total Annual Burden:* 56,346 hours.

*Total Annual Cost:* \$1,408,650.

*Nature and Extent of Confidentiality:* There is no need for confidentiality required with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Each licensee/ permittee of a digital television (DTV) station must file on an annual basis FCC Form 317. Specifically, required filers include the following (but we generally

refer to all such entities herein as a “DTV licensee/permittee”): A licensee of a digital commercial or noncommercial educational (NCE) full power television (TV) station, low power television (LPTV) station, TV translator or Class A TV station.

A permittee operating pursuant to digital special temporary authority (STA) of a commercial or NCE full power TV station, LPTV station, TV translator or Class A TV station.

Each DTV licensee/permittee must report whether they provided ancillary or supplementary services at any time during the reporting cycle. Each DTV licensee/permittee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. Each NCE licensee/permittee must also retain for eight years documentation sufficient to show that its entire bitstream was used “primarily” for NCE broadcast services on a weekly basis.

*OMB Control Number:* 30600–xxxx.

*Title:* FCC Form 2100, Application for Media Bureau Video Service Authorization, Schedule 387 (Transition Progress Report).

*Form Number:* FCC Form 2100, Schedule 387 (Transition Progress Report Form).

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents and Responses:* 1,000 respondents; 3,333 responses.

*Estimated Time per Response:* 2 hours (1 hour to complete the form, 1 hour to respond to technical questions).

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 6,666 hours.

*Total Annual Costs:* \$260,241.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* By Public Notice released January 10, 2017, The Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations, MB Docket No. 16–306, Public Notice, 32 FCC Rcd

256 (IATF/Med. Bur. 2017). The Incentive Auction Task Force and Media Bureau described the information that must be provided in the adopted FCC Form 2100, Schedule 387 (Transition Progress Report Form) to be filed by Reimbursable Stations and when and how the Transition Progress Reports must be filed. We also proposed to require broadcast television stations that are not eligible to receive reimbursement of associated expenses from the Reimbursement Fund (Non-Reimbursable Stations), but must transition to new channels as part of the Commission's channel reassignment plan, to file progress reports in the same manner and on the same schedule as Reimbursable Stations, and sought comment on that proposal. By Public Notice released May 18, 2017, The Incentive Auction Task Force and Media Bureau Adopt Filing Requirements for the Transition Progress Report Form by Stations That Are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund, MB Docket No. 16–306, Public Notice, DA 17–484 (rel. May 18, 2017) (referred to collectively with Public Notice cited above as Transition Progress Report Public Notices). We concluded that Non-Reimbursable Stations will be required to file Transition Progress Reports following the filing procedures adopted for Reimbursable Stations.

The Commission is seeking from the Office of Management and Budget (OMB) approval for FCC Form 2100, Schedule 387 (Transition Progress Report).

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017–16562 Filed 8–4–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0761]

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other

Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before October 6, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501-3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to

further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060-0761.

*Title:* Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05-231.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

*Number of Respondents and Responses:* 59,995 respondents; 512,831 responses.

*Estimated Time per Response:* 0.25 (15 minutes) to 60 hours.

*Frequency of Response:* Annual reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

*Total Annual Burden:* 702,562 hours.

*Annual Cost Burden:* \$35,638,596.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB-1, "Informal Complaints, Inquiries, and Requests for Dispute Assistance." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB-1 "Informal Complaints, Inquiries, and Requests for Dispute Assistance" in the **Federal Register** on August 15, 2014, published at 79 FR 48152, which became effective on September 24, 2014.

*Privacy Act Impact Assessment:* Yes.

*Needs and Uses:* The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of "pre-rule" programming, be closed captioned. The existing collections include petitions by video programming providers, producers, and owners for exemptions from the closed captioning rules, responses by commenters, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors (VPDs) and video programmers, recordkeeping in support of complaint responses, and compliance ladder obligations in the event of a pattern or trend of violations; records of monitoring and maintenance activities; caption quality best practices

procedures; making video programming distributor contact information available to viewers in phone directories, on the Commission's Web site and the Web sites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them); and video programmers filing contact information and compliance certifications with the Commission.

On February 19, 2016, the Commission adopted the *Closed Captioning Quality Second Report and Order*, published at 81 FR 57473, August 23, 2016, amending its rules to allocate the responsibilities of VPDs and video programmers with respect to the provision and quality of closed captioning. The Commission took the following actions, among others:

(a) Required video programmers to file certifications with the Commission that (1) the video programmer (i) is in compliance with the rules requiring the inclusion of closed captions, and (ii) either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (2) is exempt from the captioning obligation and specifies the exemption claimed.

(b) Revised the procedures for receiving, serving, and addressing television closed captioning complaints in accordance with a burden-shifting compliance model.

(c) Established a compliance ladder for the Commission's television closed captioning quality requirements.

(d) Required VPDs to use the Commission's web form when providing contact information to the VPD registry.

(e) Required video programmers to register their contact information with the Commission for the receipt and handling of written closed captioning complaints.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017-16563 Filed 8-4-17; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MARITIME COMMISSION

### Agency Information Collection Activities: 60-Day Public Comment Request

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, and as required by

the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on the continuing information collection (extension with no changes) listed below in this notice.

**DATES:** Written comments must be submitted on or before October 6, 2017.

**ADDRESSES:** Address all comments to: Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, Phone: (202) 523-5800, Email: [omd@fmc.gov](mailto:omd@fmc.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Donna Lee by phone at (202) 523-5800 or email at [omd@fmc.gov](mailto:omd@fmc.gov).

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Information Collection Open for Comment**

**Title:** 46 CFR part 565—Controlled Carriers.

**OMB Approval Number:** 3072-0060 (Expires December 31, 2017).

**Abstract:** Section 9 of the Shipping Act of 1984, 46 U.S.C. 40701-40706, requires that the Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is

just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

**Current Actions:** There are no changes to this information collection, and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Needs and Uses:** The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

**Frequency:** The submission of notifications from controlled carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

**Type of Respondents:** Controlled carriers are ocean common carriers which are owned or controlled by a government.

**Number of Annual Respondents:** The Commission cannot anticipate when a new controlled carrier may enter the United States trade or when ownership or control of a carrier will change so that notification is required. Over the past three years, the Commission has received, on average, one notification per year.

**Estimated Time per Response:** The estimated time for each notification is 2 hours, and multiple responses may be filed each year.

**Total Annual Burden:** For purposes of calculating total annual burden, the Commission assumes one response annually. The Commission thus estimates the total annual burden to be

2 hours (1 response × 2 hours per response).

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2017-16606 Filed 8-4-17; 8:45 am]

**BILLING CODE 6731-AA-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 22, 2017.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *GGC, LLP, an Iowa Limited Partnership, Council Bluffs, Iowa; Richard Gibson, Kim Gibson, and Tracy Connealy, all of Council Bluffs, Iowa;* as a group acting in concert, to retain and acquire additional voting shares of TS Contrarian Bancshares, Inc., Treynor, Iowa and thereby indirectly acquire voting shares of The Bank of Tioga, Tioga, North Dakota and First National Bank & Trust Company, Clinton, Illinois.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to

[Comments.applications@stls.frb.org](mailto:Comments.applications@stls.frb.org):

1. *Nancy Toler Grigsby, individually and as trustee of the Nancy Toler Grigsby Trust UTA 11/22/2010, the Cynthia Toler Hale Trust UTA 11/22/2010, and the John A. Grigsby Trust A, and as a family control group that also includes Cynthia Toler Hale;* to retain voting shares of MNB Bancshares, Inc., and thereby retain shares of The Malvern National Bank, all of Malvern, Arkansas.

Board of Governors of the Federal Reserve System, August 2, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-16600 Filed 8-4-17; 8:45 am]

**BILLING CODE 6210-01-P**

Board of Governors of the Federal Reserve System, August 1, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-16512 Filed 8-4-17; 8:45 am]

**BILLING CODE P**

Board of Governors of the Federal Reserve System, August 2, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-16601 Filed 8-4-17; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 2017.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Pedcor Capital, LLC, Pedcor Bancorp, and American Capital Bancorp*, of Carmel, Indiana; to become a savings and loan holding company upon the conversion of International City Bank, Long Beach, California, to a federal savings bank.

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 2017.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Hometown Community Bancorp, Inc. and Hometown Community Bancorp, Inc. ESOP, both of Morton, Illinois*; to acquire 100 percent of the voting shares of Arthur Bancshares Corp. and thereby indirectly acquire State Bank of Arthur, both of Arthur, Illinois.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1673-NC]

**RIN 0938-AS97**

### Medicare Program; FY 2018 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice with comment period updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs), which include freestanding IPFs and psychiatric units of an acute care hospital or critical access hospital. These changes are applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2017 through September 30, 2018 (FY 2018).

**DATES:** The updated IPF prospective payment rates are effective for discharges occurring on or after October 1, 2017 through September 30, 2018.

*Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 6, 2017.

**ADDRESSES:** In commenting, refer to file code CMS-1673-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1673-NC, P.O. Box 8010, Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1673-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** The IPF Payment Policy mailbox at [IPFPaymentPolicy@cms.hhs.gov](mailto:IPFPaymentPolicy@cms.hhs.gov) for general information. Theresa Bean (410) 786-2287 or James Hardesty (410) 786-2629 for information regarding the regulatory impact analysis.

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### **Availability of Certain Tables Exclusively Through the Internet on the CMS Web site**

Tables setting forth the fiscal year (FY) 2018 Wage Index for Urban Areas Based on Core-Based Statistical Area (CBSA) Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are available exclusively through the Internet, on the CMS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/IPFPPS/WageIndex.html>.

In addition, tables showing the complete listing of ICD-10 Clinical Modification (CM) and Procedure Coding System (PCS) codes underlying the FY 2018 Inpatient Psychiatric Facilities (IPF) Prospective Payment System (PPS) for comorbidity adjustment, code first, and Electroconvulsive Therapy (ECT) are available online at: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html>. Addendum B to this notice with comment period only shows the table of changes to the ICD-10-CM/PCS codes which affect FY 2018 IPF PPS comorbidity categories.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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#### **Acronyms**

Because of the many terms to which we refer by acronym in this notice with comment period, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

- ADC Average Daily Census
- BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106-113)
- BLS Bureau of Labor Statistics
- CAH Critical Access Hospital
- CBSA Core-Based Statistical Area
- CCR Cost-to-Charge Ratio
- CPI Consumer Price Index

CPI-U Consumer Price Index for all Urban Consumers  
 CY Calendar Year  
 DRGs Diagnosis-Related Groups  
 ECT Electroconvulsive Therapy  
 ESRD End State Renal Disease  
 FR Federal Register  
 FTE Full-time equivalent  
 FY Federal Fiscal Year (October 1 through September 30)  
 GDP Gross Domestic Product  
 GME Graduate Medical Education  
 HCRIS Healthcare Cost Report Information System  
 ICD-9-CM International Classification of Diseases, 9th Revision, Clinical Modification  
 ICD-10-CM International Classification of Diseases, 10th Revision, Clinical Modification  
 ICD-10-PCS International Classification of Diseases, 10th Revision, Procedure Coding System  
 IGI IHS Global, Inc.  
 IPF Inpatient Psychiatric Facility  
 IPFQR Inpatient Psychiatric Facilities Quality Reporting  
 IPPS Inpatient Prospective Payment System  
 IRFs Inpatient Rehabilitation Facilities  
 LOS Length of Stay  
 LRS Labor-related Share  
 LTCHs Long-Term Care Hospitals  
 MAC Medicare Administrative Contractor  
 MedPAR Medicare Provider Analysis and Review File  
 MFP Multifactor Productivity  
 MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003  
 MSA Metropolitan Statistical Area  
 MS-DRG Medicare Severity-Diagnosis Related Group  
 NDAA National Defense Authorization

Act  
 NQF National Quality Forum  
 OMB Office of Management and Budget  
 OPPTS Outpatient Prospective Payment System  
 POS Provider of Services  
 PPS Prospective Payment System  
 RFA Regulatory Flexibility Act  
 RFI Request for Information  
 RPL Rehabilitation, Psychiatric, and Long-Term Care  
 RY Rate Year  
 SBA Small Business Administration  
 SCHIP State Children's Health Insurance Program  
 SNF Skilled Nursing Facility  
 TEFRA Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)

## I. Executive Summary

### A. Purpose

This notice with comment period updates the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by IPFs for discharges occurring during the FY beginning October 1, 2017 through September 30, 2018.

### B. Summary of the Major Provisions

In this notice with comment period, we are updating the IPF Prospective Payment System (PPS), as specified in 42 CFR 412.428. The updates include the following:

- For FY 2018, we adjusted the 2012-based IPF market basket update (2.6 percent) by a reduction for economy-wide productivity (0.6 percentage point)

as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act). We further reduced the 2012-based IPF market basket update by 0.75 percentage point as required by section 1886(s)(2)(A)(ii) of the Act, resulting in an estimated IPF payment rate update of 1.25 percent for FY 2018.

- The 2012-based IPF market basket resulted in a labor-related share of 75.0 percent for FY 2018.

- We updated the IPF PPS per diem rate from \$761.37 to \$771.35. Providers that failed to report quality data for FY 2018 payment will receive a FY 2018 per diem rate of \$756.11.

- We updated the ECT payment per treatment from \$327.78 to \$332.08. Providers that failed to report quality data for FY 2018 payment will receive a FY 2018 ECT payment per treatment of \$325.52.

- We used the updated labor-related share of 75.0 percent (based on the 2012-based IPF market basket) and CBSA rural and urban wage indices for FY 2018, and established a wage index budget-neutrality adjustment of 1.0006. The FY 2018 IPF wage index includes minor updates to a few CBSA delineations based upon a July 15, 2015 OMB Bulletin.

- We updated the fixed dollar loss threshold amount from \$10,120 to \$11,425 in order to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

### C. Summary of Impacts

Provision description	Total transfers
FY 2018 IPF PPS payment update .....	The overall economic impact of this notice with comment period is an estimated \$45 million in increased payments to IPFs during FY 2018.

## II. Background

### A. Overview of the Legislative Requirements for the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106-113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department of Health and Human Services (the Secretary) develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and certified psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

Sections 3401(f) and 10322 of the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (hereafter referred to jointly as "the Affordable Care Act") added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) of the Act titled "Reference to Establishment and Implementation of System," refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the Rate Year (RY) beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. As noted in our previous IPF PPS notice (the FY 2017 IPF PPS notice), for the RY beginning in 2016 (that is, FY 2017), the productivity adjustment currently in place is equal to 0.3 percent.

Section 1886(s)(2)(A)(ii) of the Act requires the application of an "other adjustment" that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. As noted in our previous (FY 2017) IPF PPS notice, for the RY beginning in 2016 (that is, FY

2017), section 1886(s)(3)(D) of the Act requires that the reduction currently in place be equal to 0.2 percentage point.

Sections 1886(s)(4)(A) and 1886(s)(4)(B) of the Act require that for RY 2014 and each subsequent rate year, IPFs that fail to report required quality data with respect to such a rate year shall have their annual update to a standard federal rate for discharges reduced by 2.0 percentage points. This may result in an annual update being less than 0.0 for a rate year, and may result in payment rates for the upcoming rate year being less than such payment rates for the preceding rate year. Any reduction for failure to report required quality data shall apply only to the rate year involved, and the Secretary shall not take into account such reduction in computing the payment amount for a subsequent rate year. More information about the IPF Quality Reporting Program is available in the August 22, 2016 FY 2017 Hospital IPPS for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System final rule (81 FR 57236 through 57249) and the FY 2018 Hospital IPPS for Acute Care Hospitals and the Long-Term Care Hospital PPS proposed rule (82 FR 20120 through 20130).

To implement and periodically update these provisions, we have published various proposed and final rules and notices in the **Federal Register**. For more information regarding these documents, see the CMS Web site at <https://www.cms.gov/Medicare/Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/>.

#### B. Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The federal per diem payment under the IPF PPS is comprised of the federal per diem base rate described previously and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, comorbidities; additionally, there are variable per diem adjustments to reflect higher per diem costs at the beginning of a patient's IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for the presence of a qualifying Emergency Department (ED).

The IPF PPS provides additional payment policies for: Outlier cases; interrupted stays; and a per treatment payment for patients who undergo ECT. During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended in 2008, these payments are no longer available.

A complete discussion of the regression analysis that established the IPF PPS adjustment factors appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.

- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In RY 2012, we proposed and finalized switching the IPF PPS payment rate update from a rate year that begins on July 1 and ends on June 30 to one that coincides with the federal FY that begins October 1 and ends on

September 30. In order to transition from one timeframe to another, the RY 2012 IPF PPS covered a 15-month period from July 1, 2011 through September 30, 2012. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period to coincide with a FY period, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

#### C. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the IPF PPS in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained the reasons for delaying an update to the adjustment factors, derived from the regression analysis, until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We indicated that we did not intend to update the regression analysis and the patient-level and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041).

In the May 6, 2011 IPF PPS final rule (76 FR 26432), we changed the payment rate update period to a RY that coincides with a FY update. Therefore, update notices are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring and the final rule in the summer in order to be effective on October 1. For further discussion on changing the IPF PPS payment rate update period to a RY that coincides with a FY, see the IPF PPS final rule published in the **Federal Register** on May 6, 2011 (76 FR 26434 through 26435). For a detailed list of



updates to the IPF PPS, see 42 CFR 412.428.

Our most recent IPF PPS annual update occurred in an August 1, 2016, **Federal Register** notice (81 FR 50502) (hereinafter referred to as the August 2016 IPF PPS notice), which updated the IPF PPS payment rates for FY 2017. That notice updated the IPF PPS per diem payment rates that were published in the August 2015 IPF PPS final rule (80 FR 46652) in accordance with our established policies.

### III. Provisions of the FY 2018 IPF PPS Notice

#### A. Updated FY 2018 Market Basket for the IPF PPS

##### 1. Background

The input price index that was used to develop the IPF PPS was the “Excluded Hospital with Capital” market basket. This market basket was based on 1997 Medicare cost reports for Medicare participating inpatient rehabilitation facilities (IRFs), IPFs, long-term care hospitals (LTCHs), cancer hospitals, and children’s hospitals. Although “market basket” technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the term “market basket,” as used in this document, refers to an input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a 2002-based rehabilitation, psychiatric, and long-term care (RPL) market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding IPFs, and LTCHs. Cancer and children’s hospitals were excluded from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act and not through a PPS. Also, the 2002 cost structures for cancer and children’s hospitals are noticeably different than the cost structures of freestanding IRFs, freestanding IPFs, and LTCHs. See the May 2006 IPF PPS final rule (71 FR 27046 through 27054) for a complete discussion of the 2002-based RPL market basket.

Beginning with the RY 2012 IPF PPS final rule (76 FR 26432), IPF PPS payments were updated using a 2008-based RPL market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding IPFs,

and LTCHs. The major changes for RY 2012 included: Updating the base year from FY 2002 to FY 2008; using a more specific composite chemical price proxy; breaking the professional fees cost category into two separate categories (Labor-related and Non-labor-related); and adding two additional cost categories (Administrative and Facilities Support Services, and Financial Services), which were previously included in the residual All Other Services cost categories. The RY 2012 IPF PPS proposed rule (76 FR 4998) and RY 2012 final rule (76 FR 26432) contain a complete discussion of the development of the 2008-based RPL market basket.

In the FY 2016 IPF PPS proposed rule, we proposed to create a 2012-based IPF market basket, using Medicare cost report data for both freestanding and hospital-based IPFs. We first expressed our interest in exploring the possibility of creating a stand-alone IPF market basket in the May 1, 2009 IPF PPS notice (74 FR 20376). In the FY 2016 PPS proposed rule, we solicited comments on the 2012-based IPF market basket. After consideration of these public comments, we finalized the creation and adoption of a 2012-based IPF market basket with a modification to the Wages and Salaries and Employee Benefits cost methodologies based on public comments. We believe that the use of the 2012-based IPF market basket to update IPF PPS payments is a technical improvement as it is based on Medicare Cost Report data from both freestanding and hospital-based IPFs. Furthermore, the 2012-based IPF market basket does not include costs from either IRF or LTCH providers, which were included in the 2008-based RPL market basket. We refer readers to the FY 2016 IPF PPS final rule for a detailed discussion of the 2012-based IPF PPS Market Basket and its development (80 FR 46656 through 46679).

##### 2. FY 2018 IPF Market Basket Update

For FY 2018 (beginning October 1, 2017 and ending September 30, 2018), we use an estimate of the 2012-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we estimate the market basket update for the IPF PPS based on IHS Global, Inc.’s (IGI) forecast. IGI is a nationally recognized economic and financial forecasting firm that contracts with the CMS to forecast the components of the market baskets and multifactor productivity (MFP). Based on IGI’s second quarter 2017 forecast with historical data through the first quarter of 2017, the 2012-based IPF market

basket increase factor for FY 2018 is 2.6 percent.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (a RY that coincides with a FY) and each subsequent RY. For this FY 2018 IPF PPS Notice, based on IGI’s second quarter 2017 forecast, the MFP adjustment for FY 2018 (the 10-year moving average of MFP for the period ending FY 2018) is projected to be 0.6 percent. We reduced the 2.6 percent IPF market basket update by this 0.6 percentage point productivity adjustment, as mandated by the Act. For more information on the productivity adjustment, please see the discussion in the FY 2016 IPF PPS final rule (80 FR 46675).

In addition, for FY 2018 the 2012-based IPF PPS market basket update is further reduced by 0.75 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act. This results in an estimated FY 2018 IPF PPS payment rate update of 1.25 percent ( $2.6 - 0.6 - 0.75 = 1.25$ ).

##### 3. IPF Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the federal per diem base rate (hereafter referred to as the labor-related share).

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2012-based IPF market basket, we are continuing to include in the labor-related share the sum of the relative importance of Wages and Salaries; Employee Benefits; Professional Fees; Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair; All Other; Labor-related Services; and a portion (46 percent) of the Capital-Related cost weight from the 2012-based IPF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (FY 2012) and FY 2018. Using IGI’s second quarter 2017 forecast for the 2012-based IPF market basket, the IPF labor-related share for FY 2018 is the sum of the FY 2018 relative importance



of each labor-related cost category. Please see the FY 2016 IPF PPS final rule for more information on the labor-related share and its calculation (80 FR 46676 through 46679). For FY 2018, the updated labor-related share based on IGI's second quarter 2017 forecast of the 2012-based IPF PPS market basket is 75.0 percent.

#### *B. Updates to the IPF PPS Rates for FY Beginning October 1, 2017*

The IPF PPS is based on a standardized federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

##### 1. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by

dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Additional information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be \$575.95.

The federal per diem base rate has been updated in accordance with applicable statutory requirements and § 412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral federal per diem base rate and the electroconvulsive therapy (ECT) payment per treatment appears in the August 2013 IPF PPS update notice (78 FR 46738 through 46739). These documents are available on the CMS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html>.

IPFs must include a valid procedure code for ECT services provided to IPF beneficiaries in order to bill for ECT services, as described in our Medicare Claims Processing Manual, Chapter 3, Section 190.7.3 (available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf>.) There were no changes to the ECT procedure codes used on IPF claims as a result of the update to the ICD-10-PCS code set for FY 2018.

##### 2. Update of the Federal per Diem Base Rate and Electroconvulsive Therapy Payment per Treatment

The current (FY 2017) federal per diem base rate is \$761.37 and the ECT payment per treatment is \$327.78. For FY 2018, we applied a payment rate update of 1.25 percent (that is, the 2012-based IPF market basket increase for FY 2018 of 2.6 percent less the productivity adjustment of 0.6 percentage point, and further reduced by the 0.75 percentage point required under section 1886(s)(3)(E) of the Act), and the wage index budget-neutrality factor of 1.0006

(as discussed in section III.D.1.e of this notice with comment period) to the FY 2017 federal per diem base rate of \$761.37, yielding a federal per diem base rate of \$771.35 for FY 2018. Similarly, we applied the 1.25 percent payment rate update and the 1.0006 wage index budget-neutrality factor to the FY 2017 ECT payment per treatment, yielding an ECT payment per treatment of \$332.08 for FY 2018.

Section 1886(s)(4)(A)(i) of the Act requires that, for RY 2014 and each subsequent RY, in the case of an IPF that fails to report required quality data with respect to such rate year, the Secretary shall reduce any annual update to a standard federal rate for discharges during the RY by 2.0 percentage points. Therefore, we are applying a 2.0 percentage point reduction to the federal per diem base rate and the ECT payment per treatment as follows: For IPFs that failed to submit quality reporting data under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program, we are applying a -0.75 percent payment rate update (that is, 1.25 percent reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(ii) of the Act, which results in a negative update percentage) and the wage index budget-neutrality factor of 1.0006 to the FY 2017 federal per diem base rate of \$761.37, yielding a federal per diem base rate of \$756.11 for FY 2018. Similarly, for IPFs that failed to submit quality reporting data under the IPFQR Program, we are applying the -0.75 percent annual payment rate update and the 1.0006 wage index budget-neutrality factor to the FY 2017 ECT payment per treatment of \$327.78, yielding an ECT payment per treatment of \$325.52 for FY 2018.

#### *C. Updates to the IPF PPS Patient-Level Adjustment Factors*

##### 1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). We continue to use the existing regression-derived adjustment factors established in 2005 for FY 2018. However, we have used more recent claims data to simulate payments to set the outlier fixed dollar loss threshold amount and to assess the impact of the IPF PPS updates.

## 2. IPF-PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS-DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

### a. MS-DRG Assignment

We believe it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the Inpatient Prospective Payment System (IPPS) for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD-9-CM) and DRG patient classification system (CMS DRGs) that were utilized at the time under the IPPS. In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS-DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the 2008 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS-DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS-DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis. Mapping the DRGs to the MS-DRGs resulted in the current 17 IPF MS-DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. For the FY 2018 update, we are not making any changes to the IPF MS-DRG adjustment factors.

In FY 2015 rulemaking (79 FR 45945 through 45947), we proposed and finalized conversions of the ICD-9-CM-based MS-DRGs to ICD-10-CM/PCS-based MS-DRGs, which were implemented on October 1, 2015. Further information on the ICD-10-CM/PCS MS-DRG conversion project can be found on the CMS ICD-10-CM Web site at <https://www.cms.gov/Medicare/>

### *Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

For FY 2018, we will continue to make a payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF MS-DRGs listed in Addendum A of this notice with comment period. Psychiatric principal diagnoses that do not group to one of the 17 designated DRGs will still receive the federal per diem base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

The diagnoses for each IPF MS-DRG will be updated as of October 1, 2017, using the final FY 2018 ICD-10-CM/PCS code sets. The FY 2018 IPPS Final Rule with comment period includes tables of the changes to the ICD-10-CM/PCS code sets which underlie the FY 2018 IPF MS-DRGs. Both the FY 2018 IPPS final rule and the tables of changes to the ICD-10-CM/PCS code sets which underlie the FY 2018 MS-DRGs are available on the IPPS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

### Code First

As discussed in the ICD-10-CM Official Guidelines for Coding and Reporting, certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD-10-CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a "use additional code" note at the etiology code, and a "code first" note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes (etiology followed by manifestation). In accordance with the ICD-10-CM Official Guidelines for Coding and Reporting, when a primary (psychiatric) diagnosis code has a "code first" note, the provider would follow the instructions in the ICD-10-CM text. The submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

For more information on "code first" policy, please see the November 2004 IPF PPS final rule (69 FR 66945). In the FY 2015 IPF PPS final rule, we provided a "code first" table for reference that highlights the same or similar

manifestation codes where the "code first" instructions apply in ICD-10-CM that were present in ICD-9-CM (79 FR 46009). In the FY 2018 update to the ICD-10-CM/PCS code sets, there were a number of codes deleted from the IPF Code First list for diagnosis codes F0280 and F0281. These changes are shown in Addendum B of this notice with comment period.

### b. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain existing medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD-9-CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for FY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for discharge claims, on or after October 1, 2015, require IPFs to enter the complete ICD-10-CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD-9-CM "code first" instructions apply. In a "code first" situation, the submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will

continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD-9-CM codes were converted to ICD-10-CM/PCS in the FY 2015 IPF PPS final rule (79 FR 45947 through 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD-10-CM implementation as it would be if the same record had been coded in ICD-9-CM and submitted prior to ICD-10-CM/PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal. For FY 2018, we will use the same comorbidity adjustment factors in effect in FY 2017, which are found in Addendum A of this notice with comment period.

We have updated the ICD-10-CM/PCS codes which are associated with the existing IPF PPS comorbidity categories, based upon the FY 2018 update to the ICD-10-CM/PCS code set. The FY 2018 ICD-10-CM/PCS updates included additions or deletions which affected the comorbidity categories for Oncology (both the Treatment and Procedures lists). These updates are detailed in Addendum B of this notice.

In accordance with the policy established in the FY 2015 IPF PPS final rule (79 FR 45949 through 45952), we reviewed all new FY 2018 ICD-10-CM codes to remove site unspecified codes from the new FY 2018 ICD-10-CM/PCS codes in instances where more specific codes are available. There were no new FY 2018 ICD-10-CM/PCS codes that were site unspecified. Please see Addendum B of this notice with comment period for a table of changes to the ICD-10-CM/PCS codes which affect FY 2018 IPF PPS comorbidity categories.

### 3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant. For FY 2018, we will use the patient age adjustments currently in effect in FY 2017, as shown

in Addendum A of this notice with comment period.

### 4. Variable per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF. We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4 of this notice with comment period.

For FY 2018, we will use the variable per diem adjustment factors currently in effect as shown in Addendum A of this notice with comment period. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

### D. Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

#### 1. Wage Index Adjustment

##### a. Background

As discussed in the May 2006 IPF PPS final rule (71 FR 27061) and in the May 2008 (73 FR 25719) and May 2009 (74 FR 20373) IPF PPS notices, in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area, as defined in § 412.64(b)(1)(ii)(A) and (C).

##### b. Updated Wage Index for FY 2018

Since the inception of the IPF PPS, we have used the pre-floor, pre-reclassified

acute care hospital wage index in developing a wage index to be applied to IPFs, because there is not an IPF-specific wage index available. We believe that IPFs compete in the same labor markets as acute care hospitals, so the pre-floor, pre-reclassified hospital wage index should reflect IPF labor costs. As discussed in the May 2006 IPF PPS final rule for FY 2007 (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, please see the CY 2013 IPPS/LTCH PPS final rule (77 FR 53365 through 53374). For FY 2018, we will continue to apply the most recent hospital wage index (the FY 2017 pre-floor, pre-reclassified hospital wage index, which is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (data from hospital cost reports for the cost reporting period beginning during FY 2013) without any geographic reclassifications, floors, or other adjustments. We apply the FY 2018 IPF PPS wage index to payments beginning October 1, 2017.

We apply the wage index adjustment to the labor-related portion of the federal rate, which changed from 75.1 percent in FY 2017 to 75.0 percent in FY 2018. This percentage reflects the labor-related share of the 2012-based IPF market basket for FY 2018 (see section III.A.3 of this notice with comment period).

### c. OMB Bulletins

OMB publishes bulletins regarding Core-Based Statistical Area (CBSA) changes, including changes to CBSA numbers and titles. In the May 2006 IPF PPS final rule for FY 2007 (71 FR 27061 through 27067), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03-04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in FY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature

changes published in the most recent OMB bulletin that applies to the hospital wage index used to determine the current IPF PPS wage index and stated that we expect to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721). The OMB bulletins may be accessed online at [https://www.whitehouse.gov/omb/bulletins\\_default/](https://www.whitehouse.gov/omb/bulletins_default/).

In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the hospital wage index used to determine the IPF PPS wage index. For the FY 2015 IPF wage index, we used the FY 2014 pre-floor, pre-reclassified hospital wage index to adjust the IPF PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at <https://www.whitehouse.gov/omb/information-for-agencies/bulletins>.

Because the FY 2014 pre-floor, pre-reclassified hospital wage index was finalized prior to the issuance of this Bulletin, the FY 2015 IPF PPS wage index, which was based on the FY 2014 pre-floor, pre-reclassified hospital wage index, did not reflect OMB's new area delineations based on the 2010 Census. According to OMB, "[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252) and Census Bureau data." These OMB Bulletin changes are reflected in the FY 2015 pre-floor, pre-reclassified hospital wage index, upon which the FY 2016 IPF wage index was based. We adopted these new OMB CBSA delineations in the FY 2016 IPF PPS wage index and subsequent IPF wage indexes.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to, and supersedes, OMB Bulletin No. 13–01 that was issued on

February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in the attachment to OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. The complete list of statistical areas incorporating these changes is provided in OMB Bulletin No. 15–01. A copy of this bulletin may be obtained at <https://www.whitehouse.gov/omb/information-for-agencies/bulletins>.

The bulletin establishes revised delineations for the Nation's Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas. The bulletin also provides delineations of Metropolitan Divisions as well as delineations of New England City and Town Areas. OMB Bulletin No. 15–01 made the following changes that are relevant to the FY 2018 IPF wage index:

- Garfield County, OK, with principal city Enid, OK, which was a Micropolitan (geographically rural) area, now qualifies as an urban new CBSA 21420 called Enid, OK.
- The county of Bedford City, VA, a component of the Lynchburg, VA CBSA 31340, changed to town status and is added to Bedford County. Therefore, the county of Bedford City (SSA State county code 49088, FIPS State County Code 51515) is now part of the county of Bedford, VA (SSA State county code 49090, FIPS State County Code 51019). However, the CBSA remains Lynchburg, VA, 31340.
- The name of Macon, GA, CBSA 31420, as well as a principal city of the Macon-Warner Robins, GA combined statistical area, is now Macon-Bibb County, GA. The CBSA code remains as 31420.

In accordance with our longstanding policy, the IPF PPS continues to use the latest labor market area delineations available as soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. As discussed in the FY 2017 IPPS and Long-Term Care Hospital (LTCH) PPS final rule (81 FR 56913), these updated labor market area definitions from OMB Bulletin 15–01 were implemented under the IPPS beginning on October 1, 2016 (FY 2017). Therefore, we are implementing these revisions for the IPF PPS beginning October 1, 2017 (FY 2018), consistent with our historical practice of modeling IPF PPS adoption

of the labor market area delineations after IPPS adoption of these delineations.

In FY 2016, we applied a 1-year transition period when implementing the OMB delineations described in the February 28, 2013 OMB Bulletin No. 13–01, as this bulletin contained a number of significant changes that resulted in substantial payment implications for some IPF providers. That 1-year transition consisted of a blended wage index for all providers, consisting of a blend of fifty percent of the FY 2016 IPF wage index using the existing OMB delineations and fifty percent of the FY 2016 IPF wage index using the updated OMB delineations from the February 28, 2013 OMB Bulletin (80 FR 46682 through 46689). For FY 2018, we are incorporating the CBSA changes published in the July 15, 2015 OMB Bulletin No. 15–01 into the FY 2018 IPF wage index without a transition period, as we anticipate that these changes will affect a single IPF provider located in Garfield County, OK, and will increase this provider's wage index value by almost 14 percent.

In summary, as the changes made in the July 15, 2015 OMB Bulletin 15–01 are minor and do not have a large effect on a substantial number of providers, we are adopting these updates without any transition period. Therefore, the FY 2018 IPF wage index and subsequent IPF wage indices will be based solely on the new OMB CBSA delineations in OMB Bulletin No. 15–01, without any transitions. The final FY 2018 IPF wage index is located on the CMS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/WageIndex.html>.

#### d. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For FY 2018, we will continue to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

As noted in section III.D.1.c of this notice with comment period, we adopted the February 28, 2013 OMB updates to CBSA delineations in the FY 2016 IPF PPS transitional wage index.

Adoption of the updated CBSAs changed the status of 37 IPF providers designated as “rural” in FY 2015 to “urban” for FY 2016 and subsequent FYs. As such, these 37 newly urban providers no longer receive the 17 percent rural adjustment.

In the FY 2016 IPF PPS final rule, we implemented a budget-neutral 3-year phase-out of the rural adjustment for the existing FY 2015 rural IPFs that became urban in FY 2016 and that experienced a loss in payments due to changes from the new CBSA delineations (80 FR 46689 to 46690). This policy allowed rural IPFs that were classified as urban in FY 2016 to receive two-thirds of the IPF PPS rural adjustment for FY 2016. For FY 2017, these IPFs will receive one-third of the IPF PPS rural adjustment. For FY 2018 (and subsequent years), these IPFs will not receive any rural adjustment. FY 2018 is the third year of the 3-year rural adjustment phase-out. Therefore, these IPFs that were classified as rural in FY 2015, but were changed to urban in FY 2016 as a result of the February 28, 2013 OMB CBSA changes, will receive no rural adjustment in FY 2018 or subsequent years.

Additionally, as noted previously in section III.D.1.c. of this notice with comment period, the July 15, 2015 OMB Bulletin No. 15–01 changed Garfield County, Oklahoma from rural status to urban status, under new CBSA 21420. There is a single IPF in this county, which will lose the 17 percent rural adjustment in FY 2018. However, as noted in section III.D.1.c of this notice with comment period, this provider will experience an increase of nearly 14 percent in their FY 2018 wage index value. As this provider is not expected to experience as steep of a reduction in payments as did the majority of IPFs for which a phase-out of the rural adjustment was implemented in FY 2016 (80 FR 43689 through 46690), we do not believe it is appropriate or necessary to adopt a rural phase-out policy for this provider.

#### e. Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. Therefore, for FY 2018, we will continue to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to update the wage index in such a way that total estimated payments to IPFs for FY 2018 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the IPF PPS rates. We use the following

steps to ensure that the rates reflect the update to the wage indexes (based on the FY 2013 hospital cost report data) and the labor-related share in a budget-neutral manner:

*Step 1.* Simulate estimated IPF PPS payments, using the FY 2017 IPF wage index values (available on the CMS Web site) and labor-related share (as published in the FY 2017 IPF PPS notice (81 FR 50506, and 50508 to 50509)).

*Step 2.* Simulate estimated IPF PPS payments using the FY 2018 IPF wage index values (available on the CMS Web site) and labor-related share (based on the latest available data as discussed previously).

*Step 3.* Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2018 budget-neutral wage adjustment factor of 1.0006.

*Step 4.* Apply the FY 2018 budget-neutral wage adjustment factor from step 3 to the FY 2017 IPF PPS per diem rate after the application of the market basket update described in section III.A.2 of this notice with comment period, to determine the FY 2018 IPF PPS per diem rate.

#### 2. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF’s average daily census (ADC).

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching

programs. We calculated the teaching adjustment based on the IPF’s “teaching variable,” which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF’s ADC.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a “base year” and used that FTE resident number as the cap. An IPF’s FTE resident cap is ultimately determined based on the final settlement of the IPF’s most recent cost report filed before November 15, 2004 (publication date of the IPF PPS final rule). A complete discussion of the temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the January 27, 2011 IPF PPS proposed rule (76 FR 5018 through 5020) and the May 6, 2011 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721). As with other adjustment factors derived through the regression analysis, we do not plan to rerun the teaching adjustment factors in the regression analysis until we more fully analyze IPF PPS data. Therefore, in this FY 2018 notice, we will continue to retain the coefficient value of 0.5150 for the teaching adjustment to the federal per diem base rate.

#### 3. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in

which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare prospective payment systems (for example: The IPPS and LTCH PPS) adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the non-labor-related portion of the federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors through 2009 (before being reduced by locality payments) are published on the Office of Personnel Management (OPM) Web site (<https://www.opm.gov/oca/cola/rates.asp>).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- Rest of the State of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for FY 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay was phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the January 2011 IPF PPS proposed rule (76 FR 4998), we

inadvertently selected the FY 2010 COLA rates, which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for FY 2010 through FY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a new methodology to update the COLA factors for Alaska and Hawaii, and adopted this methodology for the IPF PPS in the FY 2015 IPF final rule (79 FR 45958 through 45960). We adopted this new COLA methodology for the IPF PPS because IPFs are hospitals with a similar mix of commodities and services. We think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, the IPF COLAs for FY 2015 through FY 2017 were the same as those applied under the IPPS in those years. For the FY 2018 IPF COLAs, we are continuing to adopt the COLA factors implemented in the FY 2018 IPPS/LTCH PPS final rule using the methodology finalized in the FY 2013 IPPS/LTCH final rule and implemented for the FY 2014 IPPS update. Also, as finalized in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53700 and 53701), the COLA updates are determined every four years, when the IPPS market basket labor-related share is updated during rebasing. Because the labor-related share of the IPPS market basket is being updated for FY 2018, the COLA factors are being updated in FY 2018 IPPS/LTCH rulemaking. As such, we are also updating the IPF PPS COLA factors for FY 2018.

Specifically, the FY 2018 IPPS/LTCH PPS final rule updates the 2009 OPM COLA factors (as these are the last COLA factors OPM published prior to transitioning from COLAs to locality pay) by a comparison of the growth in the Consumer Price Indices (CPIs) for Anchorage, AK and Honolulu, HI relative to the growth in the CPI for the average U.S. city as published by the Bureau of Labor Statistics (BLS). Because BLS publishes CPI data for only Anchorage and Honolulu, using the methodology we finalized in the FY 2013 IPPS/LTCH PPS final rule, we use the comparison of the growth in the overall CPI relative to the growth in the CPI for those cities to update the COLA factors for all areas in Alaska and Hawaii, respectively. We believe that the relative price differences between these cities and the United States (as measured by the CPIs mentioned

previously) are appropriate proxies for the relative price differences between the “other areas” of Alaska and Hawaii and the United States.

BLS publishes the CPI for All Items for Anchorage, Honolulu, and for the average U.S. city. However, consistent with the methodology finalized in the FY 2013 IPPS/LTCH PPS final rule, in the FY 2018 IPPS/LTCH PPS final rule, reweighted CPIs were created for each of the respective areas to reflect the underlying composition of the IPPS market basket nonlabor-related share. The current composition of the CPI for All Items for all of the respective areas is approximately 40 percent commodities and 60 percent services. However, the IPPS nonlabor-related share is comprised of a different mix of commodities and services. Therefore, reweighted indexes were created for Anchorage, Honolulu, and the average U.S. city and use the respective CPI commodities index and CPI services index using the approximate 55 percent commodities/45 percent services shares obtained from the updated 2014-based IPPS market basket.

Reweighted indexes were created using BLS data for 2009 through 2016, which is the most recent data available at the time of the FY 2018 IPPS/LTCH final rule. In the FY 2014 IPPS/LTCH PPS final rule (78 FR 50985 through 50987), reweighted indexes were created based on the FY 2010-based IPPS market basket (which was adopted for the FY 2014 IPPS update) and BLS data for 2009 through 2012 (the most recent BLS data at the time of the FY 2014 IPPS/LTCH PPS rulemaking). We continue to believe this methodology is appropriate for IPFs because we continue to make a COLA for IPFs located in Alaska and Hawaii by multiplying the nonlabor-related portion of the per diem amount by a COLA factor.

Under the COLA factor update methodology established in the FY 2013 IPPS/LTCH final rule, CMS exercised its discretionary authority to adjust payments to hospitals located in Alaska and Hawaii by incorporating a 25 percent cap on the CPI-updated COLA factors. We note that OPM’s COLA factors were calculated with a statutorily mandated cap of 25 percent, and the IPPS has exercised discretionary authority to adjust Alaska and Hawaii payments by incorporating this cap. Because the IPF PPS adopted the IPPS COLA factor update methodology in FY 2015 rulemaking, the IPF PPS also continues to use such a cap for FY 2018.

The COLA factors that we are establishing for FY 2018 to adjust the nonlabor-related portion of the per diem

amount for IPFs located in Alaska and Hawaii are shown in Table 1. For comparison purposes, we also are

showing the FY 2015 through FY 2017 COLA factors.

TABLE 1—COMPARISON OF IPF PPS COST-OF-LIVING ADJUSTMENT FACTORS: IPFs LOCATED IN ALASKA AND HAWAII

Area	FY 2015 through 2017	FY 2018
<b>Alaska:</b>		
City of Anchorage and 80-kilometer (50-mile) radius by road .....	1.23	1.25
City of Fairbanks and 80-kilometer (50-mile) radius by road .....	1.23	1.25
City of Juneau and 80-kilometer (50-mile) radius by road .....	1.23	1.25
Rest of Alaska .....	1.25	1.25
<b>Hawaii:</b>		
City and County of Honolulu .....	1.25	1.25
County of Hawaii .....	1.19	1.21
County of Kauai .....	1.25	1.25
County of Maui and County of Kalawao .....	1.25	1.25

As noted in the FY 2018 IPPS/LTCH PPS final rule, the reweighted CPI for Anchorage, AK grew faster than the reweighted CPI for the average U.S. city over the 2009 to 2016 time period, at 12.4 percent and 10.5 percent, respectively. As a result, for FY 2018, COLA factors for the City of Anchorage, City of Fairbanks, and City of Juneau were calculated to be 1.25 compared to the FY 2017 COLA factor of 1.23. For FY 2018, a COLA factor of 1.27 was calculated for the Rest of Alaska compared to the FY 2017 COLA factor of 1.25. However, as stated previously, we are applying the methodology finalized in the FY 2013 IPPS/LTCH final rule and adopted in IPF PPS FY 2015 rulemaking to incorporate a cap of 1.25 for the rest of Alaska.

Similarly, the reweighted CPI for Honolulu, HI grew faster than the reweighted CPI for the average U.S. city over the 2009 to 2016 time period, at 13.7 percent and 10.5 percent, respectively. As a result, for FY 2018, COLA factors were calculated for the City and County of Honolulu, County of Kauai, County of Maui, and County of Kalawao to be 1.29, compared to the FY 2017 COLA factor of 1.25 (which was based on OPM's published COLA factors for 2009, as described previously). However, as stated previously, we are applying the methodology finalized in the FY 2013 IPPS/LTCH PPS final rule and adopted in IPF PPS FY 2015 rulemaking to incorporate a cap of 1.25 for these areas. In addition, the COLA factor for the County of Hawaii for FY 2018 was calculated to be 1.21 compared to the FY 2017 COLA factor of 1.19.

The IPF PPS COLA factors for FY 2018 are also shown in Addendum A of this notice with comment period.

#### 4. Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute care hospital or a CAH, for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS), furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. Those IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit. We

clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF. For FY 2018, we will continue to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

#### E. Other Payment Adjustments and Policies

##### 1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the



incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total projected IPF PPS payments.

#### 2. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy, which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (the December 2016 update of FY 2016 IPF claims) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. To update the IPF outlier threshold amount for FY 2018, we used FY 2016 claims data and the same methodology that we used to set the initial outlier threshold amount in the May 2006 IPF PPS final rule (71 FR 27072 and 27073), which is also the

same methodology that we used to update the outlier threshold amounts for years 2008 through 2017. Based on an analysis of these updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 2.26 percent in FY 2017. Therefore, we will update the outlier threshold amount to \$11,425 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2018.

#### 3. Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the June 2003 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for acute care hospitals, because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule: We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the CY 2017 Provider Specific File.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2018 is 1.9634 for rural IPFs, and 1.7071 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national

(either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.
- IPFs whose overall CCR is in excess of three standard deviations above the corresponding national geometric mean (that is, above the ceiling).
- Other IPFs for which the Medicare Administrative Contractor (MAC) obtains inaccurate or incomplete data with which to calculate a CCR.

We are updating the FY 2018 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2018, to be used in each of the three situations listed previously, using the most recent CCRs entered in the CY 2017 Provider Specific File, we estimate a national median CCR of 0.5930 for rural IPFs and a national median CCR of 0.4420 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

#### IV. Update on IPF PPS Refinements

For RY 2012, we identified several areas of concern for future refinement, and we invited comments on these issues in our RY 2012 proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

We have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we will delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun and will continue the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS in the future, as appropriate.

As we noted in the FY 2016 IPF PPS final rule (80 FR 46693 to 46694), our preliminary analysis of 2012 to 2013 IPF data found that over 20 percent of IPF stays reported no ancillary costs, such



as laboratory and drug costs, in their cost reports, or laboratory or drug charges on their claims. Because we expect that most patients requiring hospitalization for active psychiatric treatment will need drugs and laboratory services, we again remind providers that the IPF PPS per diem payment rate includes the cost of all ancillary services, including drugs and laboratory services. We pay only the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF, except for certain professional services, and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

We are continuing to analyze data from claims and cost reports that do not include ancillary charges or costs, and will be sharing our findings with the Center for Program Integrity and the Office of Financial Management for further investigation, as the results warrant. Our refinement analysis is dependent on recent precise data for costs, including ancillary costs. We will continue to collect these data and analyze them for both timeliness and accuracy with the expectation that these data will be used in a future refinement. Since we are not making refinements for FY 2018, we will continue to use the existing adjustment factors.

#### V. Waiver of Notice and Comment

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice.

We find it is unnecessary to undertake notice and comment rulemaking for this action because the updates in this notice with comment period do not reflect any substantive changes in policy, but merely reflect the application of previously established methodologies. Therefore, under 5 U.S.C 553(b)(3)(B), for good cause, we waive notice and comment procedures.

#### VI. Request for Information on CMS Flexibilities and Efficiencies

CMS is committed to transforming the health care delivery system—and the Medicare program—by putting an additional focus on patient-centered care and working with providers, physicians, and patients to improve

outcomes. We seek to reduce burdens for hospitals, physicians, and patients, improve the quality of care, decrease costs, and ensure that patients and their providers and physicians are making the best health care choices possible. These are the reasons we are including this Request for Information in this notice with comment period.

As we work to maintain flexibility and efficiency throughout the Medicare program, we would like to start a national conversation about improvements that can be made to the health care delivery system that reduce unnecessary burdens for clinicians, other providers, and patients and their families. We aim to increase quality of care, lower costs improve program integrity, and make the health care system more effective, simple and accessible.

We would like to take this opportunity to invite the public to submit their ideas for regulatory, subregulatory, policy, practice, and procedural changes to better accomplish these goals. Ideas could include payment system redesign, elimination or streamlining of reporting, monitoring and documentation requirements, aligning Medicare requirements and processes with those from Medicaid and other payers, operational flexibility, feedback mechanisms and data sharing that would enhance patient care, support of the physician-patient relationship in care delivery, and facilitation of individual preferences. Responses to this Request for Information could also include recommendations regarding when and how CMS issues regulations and policies and how CMS can simplify rules and policies for beneficiaries, clinicians, physicians, providers, and suppliers. Where practicable, data and specific examples would be helpful. If the proposals involve novel legal questions, analysis regarding CMS' authority is welcome for CMS' consideration. We are particularly interested in ideas for incentivizing organizations and the full range of relevant professionals and paraprofessionals to provide screening, assessment and evidence-based treatment for individuals with opioid use disorder and other substance use disorders, including reimbursement methodologies, care coordination, systems and services integration, use of paraprofessionals including community paramedics and other strategies. We are requesting commenters to provide clear and concise proposals that include data and specific examples that could be implemented within the law.

We note that this is a Request for Information only. Respondents are encouraged to provide complete but concise responses. This Request for Information is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This Request for Information does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, CMS is not seeking proposals through this Request for Information and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this Request for Information; all costs associated with responding to this Request for Information will be solely at the interested party's expense. We note that not responding to this Request for Information does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this Request for Information announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this Request for Information. CMS will not respond to comment submissions in response to this Request for Information in the FY 2018 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update notice with comment period. Rather, CMS will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. CMS may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this Request for Information. Responses to this notice with comment period are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this Request for Information may be used by the Government for program planning on a nonattribution basis. Respondents should not include any information that might be considered proprietary or confidential. This Request for Information should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. CMS may publicly post the

public comments received, or a summary of those public comments.

## VII. Collection of Information Requirements

This notice does not impose any new or revised information collection requirements or burden pertaining to collecting, reporting, recordkeeping, or disclosing information. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## VIII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the “DATES” section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## IX. Regulatory Impact Analysis

### A. Statement of Need

This notice with comment period updates the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2018 (October 1, 2017 through September 30, 2018). We are applying the 2012-based IPF market basket increase of 2.6 percent, less the productivity adjustment of 0.6 percentage point as required by 1886(s)(2)(A)(i) of the Act, and further reduced by 0.75 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act, for a total FY 2018 payment rate update of 1.25 percent. In this notice with comment period, we are also updating the IPF labor-related share and updating the IPF wage index for FY 2018. The rural adjustment phase-out for the small number of rural providers which became urban providers in FY 2016 as a result of FY 2016 changes to CBSA delineations is now in its third and final year, and results in no rural adjustment for the affected providers in FY 2018, or in subsequent years.

### B. Overall Impact

We have examined the impacts of this notice with comment period as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security

Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. This notice with comment period is not designated as economically “significant” under section 3(f)(1) of Executive Order 12866.

We estimate that the total impact of these changes for FY 2018 payments compared to FY 2017 payments will be a net increase of approximately \$45 million. This reflects a \$55 million increase from the update to the payment rates (+\$115 million from the unadjusted second quarter 2017 IGI forecast of the 2012-based IPF market basket of 2.6 percent, -\$25 million for the productivity adjustment of 0.6 percentage point, and -\$35 million for the other adjustment of 0.75 percentage point), as well as a \$10 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to decrease from 2.26 percent in FY 2017 to 2.0 percent of total estimated IPF payments in FY 2018.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small

entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of \$7.5 million to \$38.5 million or less in any 1 year, depending on industry classification (for details, refer to the SBA Small Business Size Standards found at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf)).

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs’ revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA.

As shown in Table 2, we estimate that the overall revenue impact of this notice with comment period on all IPFs is to increase Medicare payments by approximately 0.99 percent. As a result, since the estimated impact of this notice with comment period is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this notice with comment period will have a positive revenue impact on a substantial number of small entities. MACs are not considered to be small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this notice with comment period will not have an adverse impact on the rural hospitals based on the data of the 277 rural units and 67 rural hospitals in our database of 1,621 IPFs for which data were available. Therefore, the Secretary has determined that this notice with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates

require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately \$148 million. This notice with comment period will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector of \$148 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. As stated previously, this notice with comment period will not have a substantial effect on state and local governments.

### C. Anticipated Effects

In this section, we discuss the historical background of the IPF PPS and the impact of this notice with comment period on the Federal Medicare budget and on IPFs.

#### 1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1 of this notice with comment period, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality

factor to the federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this notice with comment period will be due to the market basket update for FY 2018 of 2.6 percent (see section III.A.2 of this notice with comment period) less the productivity adjustment of 0.6 percentage point required by section 1886(s)(2)(A)(i) of the Act; further reduced by the “other adjustment” of 0.75 percentage point under sections 1886(s)(2)(A)(ii) and 1886 (s)(3)(E) of the Act; and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2018 impact will be a net increase of \$45 million in payments to IPF providers. This reflects an estimated \$55 million increase from the update to the payment rates and a \$10 million decrease due to the update to the outlier threshold amount to set total estimated outlier payments at 2.0 percent of total estimated payments in FY 2018. This estimate does not include the implementation of the required 2.0 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section III.B.2 of this notice with comment period).

#### 2. Impact on Providers

To show the impact on providers of the changes to the IPF PPS discussed in this notice with comment period, we compare estimated payments under the IPF PPS rates and factors for FY 2018 versus those under FY 2017. We determined the percent change of estimated FY 2018 IPF PPS payments compared to FY 2017 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount; the updated wage index data including the updated labor-related share; and the market basket update for

FY 2018, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i) of the Act, and the “other adjustment” according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act.

To illustrate the impacts of the FY 2018 changes in this notice with comment period, our analysis begins with a FY 2017 baseline simulation model based on FY 2016 IPF payments inflated to the midpoint of FY 2017 using IHS Global Inc.’s most recent forecast of the market basket update (see section III.A.2. of this notice with comment period); the estimated outlier payments in FY 2017; the FY 2016 pre-floor, pre-reclassified hospital wage index; the FY 2017 labor-related share; and the FY 2017 percentage amount of the rural adjustment. During the simulation, total outlier payments are maintained at 2 percent of total estimated IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2017 pre-floor, pre-reclassified hospital wage index.
- The FY 2018 labor-related share.
- The market basket update for FY 2018 of 2.6 percent less the productivity adjustment of 0.6 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act and further reduced by the “other adjustment” of 0.75 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act, for a payment rate update of 1.25 percent.

Our final column comparison illustrates the percent change in payments from FY 2017 (that is, October 1, 2016, to September 30, 2017) to FY 2018 (that is, October 1, 2017, to September 30, 2018) including all the changes in this notice with comment period.

TABLE 2—IPF PPS IMPACTS FOR FY 2018  
[Percent change in columns 3 through 6]

Facility by type (1)	Number of facilities (2)	Outlier (3)	CBSA wage index and labor share (4)	Payment update <sup>1</sup> (5)	Total percent change <sup>2</sup> (6)
All Facilities .....	1,621	– 0.26	0.00	1.25	0.99
Total Urban .....	1,277	– 0.26	– 0.06	1.25	0.93
Total Rural .....	344	– 0.26	0.38	1.25	1.37
Urban unit .....	827	– 0.38	– 0.20	1.25	0.67
Urban hospital .....	450	– 0.09	0.13	1.25	1.29
Rural unit .....	277	– 0.31	0.39	1.25	1.33
Rural hospital .....	67	– 0.14	0.34	1.25	1.45
By Type of Ownership:					

TABLE 2—IPF PPS IMPACTS FOR FY 2018—Continued

[Percent change in columns 3 through 6]

Facility by type	Number of facilities	Outlier	CBSA wage index and labor share	Payment update <sup>1</sup>	Total percent change <sup>2</sup>
(1)	(2)	(3)	(4)	(5)	(6)
Freestanding IPFs:					
Urban Psychiatric Hospitals:					
Government .....	121	−0.32	−0.09	1.25	0.83
Non-Profit .....	97	−0.13	0.49	1.25	1.61
For-Profit .....	232	−0.03	0.04	1.25	1.26
Rural Psychiatric Hospitals:					
Government .....	33	−0.14	0.90	1.25	2.02
Non-Profit .....	13	−0.12	−0.26	1.25	0.87
For-Profit .....	21	−0.14	0.11	1.25	1.22
IPF Units:					
Urban:					
Government .....	118	−0.61	−0.36	1.25	0.27
Non-Profit .....	535	−0.38	−0.29	1.25	0.57
For-Profit .....	174	−0.19	0.17	1.25	1.22
Rural:					
Government .....	68	−0.31	0.35	1.25	1.29
Non-Profit .....	147	−0.31	0.50	1.25	1.44
For-Profit .....	62	−0.30	0.19	1.25	1.14
By Teaching Status:					
Non-teaching .....	1,436	−0.22	0.04	1.25	1.06
Less than 10% interns and residents to beds .....	104	−0.37	−0.12	1.25	0.75
10% to 30% interns and residents to beds .....	60	−0.54	−0.39	1.25	0.31
More than 30% interns and residents to beds .....	21	−0.49	0.17	1.25	0.93
By Region:					
New England .....	106	−0.31	−0.46	1.25	0.47
Mid-Atlantic .....	233	−0.34	0.04	1.25	0.94
South Atlantic .....	240	−0.15	−0.25	1.25	0.85
East North Central .....	269	−0.23	−0.03	1.25	0.99
East South Central .....	165	−0.24	−0.08	1.25	0.93
West North Central .....	133	−0.34	−0.05	1.25	0.85
West South Central .....	244	−0.20	0.13	1.25	1.18
Mountain .....	105	−0.16	0.17	1.25	1.25
Pacific .....	126	−0.37	0.62	1.25	1.50
By Bed Size:					
Psychiatric Hospitals					
Beds: 0–24 .....	86	−0.09	0.27	1.25	1.43
Beds: 25–49 .....	74	−0.12	−0.04	1.25	1.09
Beds: 50–75 .....	88	−0.14	0.24	1.25	1.35
Beds: 76+ .....	269	−0.08	0.15	1.25	1.32
Psychiatric Units					
Beds: 0–24 .....	640	−0.40	−0.01	1.25	0.83
Beds: 25–49 .....	288	−0.34	−0.12	1.25	0.78
Beds: 50–75 .....	112	−0.35	−0.30	1.25	0.60
Beds: 76+ .....	64	−0.32	−0.08	1.25	0.84

<sup>1</sup> This column reflects the payment update impact of the IPF market basket update for FY 2018 of 2.6 percent, a 0.6 percentage point reduction for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act, and a 0.75 percentage point reduction in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act.

<sup>2</sup> Percent changes in estimated payments from FY 2017 to FY 2018 include all of the changes presented in this notice. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

### 3. Results

Table 2 displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from the Healthcare Cost Report Information System:

- Facility Type
- Location
- Teaching Status Adjustment
- Census Region

#### • Size

The top row of the table shows the overall impact on the 1,621 IPFs included in this analysis. In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 2.26 percent in FY 2017. Thus, we are adjusting the outlier threshold amount in this notice with comment period to set total estimated outlier payments equal to 2 percent of

total payments in FY 2018. The estimated change in total IPF payments for FY 2018, therefore, includes an approximate 0.26 percent decrease in payments because the outlier portion of total payments is expected to decrease from approximately 2.26 percent to 2.0 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of Table 2), across all hospital groups, is to decrease total estimated payments to IPFs by 0.26 percent. The largest

decrease in payments is estimated to be a 0.61 percent decrease in payments for urban government IPF units.

In column 4, we present the effects of the budget-neutral update to the IPF wage index and the Labor-Related Share (LRS). This represents the effect of using the most recent wage data available and taking into account the updated OMB delineations. That is, the impact represented in this column reflects the update from the FY 2017 IPF wage index to the FY 2018 IPF wage index, which includes the LRS update from 75.1 percent in FY 2017 to 75.0 percent in FY 2018. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4, however, there will be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 0.90 percent for rural government psychiatric hospitals, and the largest decrease in payments to be 0.46 percent for New England IPFs.

In column 5, we present the estimated effects of the update to the IPF PPS payment rates of 1.25 percent, which are based on the 2012-based IPF market basket update of 2.6 percent, less the productivity adjustment of 0.6 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act, and further reduced by 0.75 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act.

Finally, column 6 compares our estimates of the total changes reflected in this notice with comment period for FY 2018 to the estimates for FY 2017 (without these changes). The average estimated increase for all IPFs is approximately 0.99 percent. This estimated net increase includes the effects of the 2.6 percent market basket update reduced by the productivity adjustment of 0.6 percentage point, as required by section 1886(s)(2)(A)(i) of the Act and further reduced by the “other adjustment” of 0.75 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act. It also includes the overall estimated 0.26 percent decrease in estimated IPF outlier payments as a percent of total payments from the update to the outlier fixed dollar loss threshold amount.

IPF payments are estimated to increase by 0.93 percent in urban areas and 1.37 percent in rural areas. Overall, IPFs are estimated to experience a net increase in payments as a result of the updates in this notice with comment period. The largest payment increase is estimated at 2.02 percent for rural government psychiatric hospitals.

#### 4. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2018 IPF PPS, but we continue to expect that paying prospectively for IPF services will enhance the efficiency of the Medicare program.

#### 5. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this notice with comment period, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the notice with comment period, we assume that the total number of unique commenters on the most recent IPF proposed rule from FY 2016 will be the number of reviewers of this notice with comment period. We acknowledge that this assumption may understate or overstate the costs of reviewing this notice with comment period. It is possible that not all commenters reviewed the FY 2016 IPF proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this notice with comment period. We welcome any comments on the approach in estimating the number of entities which will review this notice with comment period.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this notice with comment period, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the notice with comment period. We seek comments on this assumption.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this notice with comment period is \$105.16 per hour, including overhead and fringe benefits ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)). Assuming an average reading speed, we estimate that it would take approximately 0.62 hours for the staff to review half of this notice with comment period. For each IPF that reviews the notice with comment period, the estimated cost is \$65.20 (0.62 hours × \$105.16). Therefore, we estimate that the total cost of reviewing

this notice with comment period is \$4,955.20 (\$65.20 × 76 reviewers).

#### 6. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this notice with comment period is a transfer notice that does not impose more than *de minimis* costs and thus is not a regulatory action for the purposes of E.O. 13771.

#### D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule; applying the FY 2018 2012-based IPF PPS market basket update of 2.6 percent, reduced by the statutorily required multifactor productivity adjustment of 0.6 percentage point and the other adjustment of 0.75 percentage point, along with the wage index budget neutrality adjustment to update the payment rates; finalizing a FY 2018 IPF PPS wage index which is fully based upon the OMB CBSA designations found in OMB Bulletin 15–01; and continuing with the third and final year of the 3-year phase-out of the rural adjustment for IPF providers which changed from rural to urban status in FY 2016 as a result of adopting the updated OMB CBSA delineations from OMB Bulletin 13–01, which were used in the FY 2016 IPF PPS transitional wage index.

#### E. Accounting Statement

As required by OMB Circular A–4 (available at [www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf](http://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf)), in Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the updates to the IPF PPS wage index and payment rates in this notice with comment period. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this notice with comment period and based on the data for 1,621 IPFs in our database.

TABLE 3—ACCOUNTING STATEMENT:  
CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
<b>Change in Estimated Transfers from FY 2017 IPF PPS to FY 2018 IPF PPS</b>	
Annualized Monetized Transfers.	\$45 million.
From Whom to Whom?	Federal Government to IPF Medicare Providers.

In accordance with the provisions of Executive Order 12866, this notice with comment period was reviewed by the Office of Management and Budget.

Dated: July 21, 2017.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: July 24, 2017.

**Thomas E. Price,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2017-16430 Filed 8-2-17; 4:15 pm]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2017-N-1063]

#### Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The public meeting will be held on September 19, 2017, from 8:30 a.m. to 1 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993-0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <https://www.fda.gov/>

*AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2017-N-1063. The docket will close on September 18, 2017. Submit either electronic or written comments on this public meeting by September 18, 2017.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 18, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of September 18, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before September 5, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and

Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2017-N-1063 for "Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Cindy Chee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: [ODAC@fda.hhs.gov](mailto:ODAC@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION: Agenda:**

The committee will discuss supplemental new drug application (sNDA) 021938/033 SUTENT (sunitinib malate) oral capsules, submitted by C.P. Pharmaceuticals International C.V., represented by Pfizer, Inc. (authorized U.S. agent). The proposed indication (use) for this product is for the adjuvant treatment of adult patients at high risk of recurrent renal cell carcinoma following nephrectomy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

**Procedure:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the docket (see **ADDRESSES**) on or before September 5, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 11 a.m. and noon. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief

statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 25, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 28, 2017.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Cindy Chee at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 1, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-16518 Filed 8-4-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2016-E-2531]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; CINQAIR

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CINQAIR and is publishing this notice of that determination as required by law. FDA has made the determination because of the

submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by October 6, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 5, 2018. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 6, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of October 6, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").



### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2016-E-2531 for “Determination of Regulatory Review Period for Purposes of Patent Extension; CINQAIR.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments

received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product CINQAIR (reslizumab). CINQAIR is indicated for add-on maintenance treatment of patients with severe asthma aged 18 years and older, and with an eosinophilic phenotype. Subsequent to this approval, the USPTO received a patent term restoration application for

CINQAIR (U.S. Patent No. RE39,548) from UCB Celltech, and the USPTO requested FDA’s assistance in determining this patent’s eligibility for patent term restoration. In a letter dated September 26, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of CINQAIR represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

#### II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CINQAIR is 5,685 days. Of this time, 5,325 days occurred during the testing phase of the regulatory review period, while 360 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 31, 2000. The applicant claims February 15, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 31, 2000, which was 30 days after FDA receipt of the first IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* March 30, 2015. FDA has verified the applicant’s claim that the biologics license application (BLA) for CINQAIR (BLA 761033) was initially submitted on March 30, 2015.

3. *The date the application was approved:* March 23, 2016. FDA has verified the applicant’s claim that BLA 761033 was approved on March 23, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,660 days of patent term extension.

#### III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in 21 CFR 60.30, any interested person may petition FDA for a determination



regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <http://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 1, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–16516 Filed 8–4–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2017–N–0041]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Assurance Case; Withdrawal of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal of a notice that was published in the **Federal Register** of March 15, 2017.

**DATES:** August 7, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of March 15, 2017 (82 FR 13817), “Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Assurance Case,” FDA requested comment on the information collection associated with safety assurance cases (SACs).

Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information,

including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

In the March 15, 2017, **Federal Register** notice, FDA proposed to extend the information collection related to SACs (OMB control number 0910–0766). However, we are withdrawing the notice because, upon further review of the information collection request (ICR) associated with the notice and comments received on the information collection, we have determined that the estimated burden expressed in the SAC ICR is included as part of the estimated burden for the information collections in the premarket notification (510(k)) ICR (OMB control number 0910–0120).

Because the information collected for safety assurance cases is already included under another information collection approval, we have discontinued the ICR and we are withdrawing the March 15, 2017, notice requesting comment on the information collection.

The guidance entitled “Infusion Pumps Total Product Life Cycle; Guidance for Industry and FDA Staff” (<https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm209337.pdf>), which provides recommendations on the inclusion of safety assurance cases as part of the premarket submissions for new, changed, or modified infusion pumps submitted by device manufacturers, continues to provide the Agency’s current thinking on this topic.

Dated: August 2, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–16561 Filed 8–4–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2007–D–0369]

#### Product-Specific Guidances; Final Guidances for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of final product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new

drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled “Bioequivalence Recommendations for Specific Products” that explained the process that would be used to make product-specific BE recommendations available to the public on FDA’s Web site. The product-specific guidances identified in this notice were developed using the process described in that guidance.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2007–D–0369 for “Product-Specific

Guidances; Final Guidances for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions:** To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of a final guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to a final guidance document.

#### FOR FURTHER INFORMATION CONTACT:

Xiaoqiu Tang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled “Bioequivalence Recommendations for Specific Products” that explained the process that would be used to make product-specific guidances available to the public on FDA’s Web site at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA’s Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Final product-specific guidances were last announced in the **Federal Register** on September 21, 2015 (80 FR 57000). This notice announces final product-specific guidances that are posted on FDA’s Web site.

##### II. Drug Products For Which Final Product-Specific Guidances Are Available

FDA is announcing the availability of final product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—FINAL PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Acarbose.  
Acetaminophen; Aspirin, Caffeine.  
Acetaminophen; Butalbital; Caffeine; Codeine phosphate.  
Acitretin.  
Amoxicillin (multiple reference listed drugs).  
Amoxicillin; Clavulanate potassium.  
Aspirin; Butalbital; Caffeine (multiple reference listed drugs).  
Aspirin; Butalbital; Caffeine; Codeine Phosphate.  
Atenolol.

TABLE 1—FINAL PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Atenolol and Chlorthalidone.  
Cetirizine HCl.  
Chlorthalidone.  
Citalopram HBr.  
Citalopram hydrobromide.  
Clarithromycin.  
Clindamycin HCl.  
Clomiphene Citrate.  
Clonazepam.  
Clozapine.  
Cyclobenzaprine HCL.  
Cycloserine.  
Dapsone.  
Desipramine HCl.  
Desmopressin Acetate.  
Diflunisal.  
Diphenhydramine HCl.  
Dipyridamole.  
Disulfiram.  
Donepezil HCl.  
Doxazosin mesylate.  
Doxepin HCl.  
Doxercalciferol.  
Eprosartan Mesylate.  
Ethambutol HCl.  
Hydrochlorothiazide; Losartan Potassium.  
Hydrochlorothiazide; Triamterene.  
Hydrochlorothiazide; Valsartan.  
Hydrocodone bitartrate; Ibuprofen.  
Hydrocortisone.  
Hydromorphone HCl.  
Selegiline hydrochloride.  
Sotalol HCl.  
Tenofovir Disoproxil Fumarate.  
Tiagabine HCl.  
Valproic acid.  
Verapamil HCl.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to <https://www.regulations.gov> and enter Docket No. FDA–2007–D–0369.

These final guidances are being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). These guidances represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

##### III. Electronic Access

Persons with access to the internet may obtain the final guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: August 2, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning,  
Legislation, and Analysis.*

[FR Doc. 2017-16581 Filed 8-4-17; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA-2016-E-2171, FDA-  
2016-E-2169, and FDA-2016-E-2170]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; VONVENDI

**AGENCY:** Food and Drug Administration,  
HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VONVENDI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by October 6, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 5, 2018. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 6, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of October 6, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket Nos. FDA-2016-E-2171, FDA-2016-E-2169, and FDA-2016-E-2170 for "Determination of Regulatory Review Period for Purposes of Patent Extension; VONVENDI." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the

biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product VONVENDI (von Willebrand Factor (Recombinant)). VONVENDI is indicated for on-demand treatment and control of bleeding episodes in adults diagnosed with von Willebrand disease. Subsequent to this approval, the USPTO received patent term restoration applications for VONVENDI (U.S. Patent Nos. 6,465,624; 6,531,577; and 6,579,723) from Baxalta GmbH and Baxalta Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 1, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of VONVENDI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VONVENDI is 2,690 days. Of this time, 2,335 days occurred during the testing phase of the regulatory review period, while 355 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 29, 2008. The applicants claim July 30, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 29, 2008, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section*

*351 of the Public Health Service Act (42 U.S.C. 262):* December 19, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for VONVENDI (BLA 125577) was initially submitted on December 19, 2014.

3. *The date the application was approved:* December 8, 2015. FDA has verified the applicant's claim that BLA 125577 was approved on December 8, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In the applications for patent extension, these applicants seek 1,521 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in 21 CFR 60.30, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 1, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–16515 Filed 8–4–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2014–N–0222]

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry—User Fee Waivers, Reductions, and Refunds for Drug and Biological Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by September 6, 2017.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910–0693. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, [PRStaff@fda.hhs.gov](mailto:PRStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Guidance for Industry—User Fee Waivers, Reductions, and Refunds for Drug and Biological Products OMB Control Number 0910–0693—Extension

The guidance provides recommendations for applicants planning to request waivers or reductions in prescription drug user fees assessed under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 21 U.S.C. 379h) (the FD&C Act). The guidance describes the types of waivers and reductions permitted under the prescription drug

user fee provisions of the FD&C Act, and the procedures for submitting requests for waivers or reductions. It also includes recommendations for submitting information for requests for reconsideration of denials of waiver or reduction requests, and for requests for appeals. The guidance also provides clarification on related issues such as user fee exemptions for orphan drugs.

Based on Agency records, we estimate that the total annual number of waiver requests submitted for all of these categories will be 150, submitted by 115 different applicants. We estimate that the average burden hours for preparation of a submission will total 16 hours. Because FDA may request additional information from the applicant during the review period, we have also included in this estimate time to prepare any additional information. We have included in the burden estimate the preparation and submission of application fee waivers for small businesses, because small businesses requesting a waiver must submit documentation to FDA on the number of their employees and must include the information that the application is the first human drug application, within the meaning of the FD&C Act, to be submitted to the Agency for approval.

Previously, after receipt of a small business waiver request, FDA would request a small business size determination from the Small Business Administration (SBA). Waiver applicants would submit their

supporting documentation directly to SBA for evaluation and after completing their review, SBA provided FDA with a determination whether a waiver applicant qualified as a small business for purposes of evaluating user fee waivers. The burden for submission of this information to SBA is approved under OMB control number 3245-0101.

Beginning fiscal year 2015, the SBA declined to conduct further size determinations for evaluation of small business user fee waivers and as a result, a processing change at FDA occurred. The new FDA process requires waiver applicants to submit documentation directly to FDA. In addition, fewer supporting documents than previously requested by SBA are required. As a result, we estimate that the 4 burden hours per small business waiver previously attributed to SBA and approved under OMB control number 3245-0101, should now be attributed to FDA because SBA is no longer conducting size determinations for FDA. Also, because FDA is asking that applicants submit fewer supporting documents, we estimate that these burden hours should be reduced to 2 hours instead of 4 hours. We understand that SBA plans to submit a revised burden estimate to OMB control number 3245-0101 to account for this redistribution.

The reconsideration and appeal requests are not addressed in the FD&C Act, but are discussed in the guidance. We estimate that we will receive seven

requests for reconsideration annually, and that the total average burden hours for a reconsideration request will be 24 hours. In addition, we estimate that we will receive one request annually for an appeal of a user fee waiver determination, and that the time needed to prepare an appeal would be approximately 12 hours. We have included in this estimate both the time needed to prepare the request for appeal to the Chief Scientist, User Fee Appeals Officer, Office of the Commissioner, and the time needed to create and send a copy of the request for an appeal to the Director, Division of User Fee Management, Office of Management, Center for Drug Evaluation and Research.

The burden for completing and submitting Form FDA 3397 (Prescription Drug User Fee Coversheet) is not included in this analysis as the burden is included under OMB control number 0910-0297. The collections of information associated with submission of a new drug application or biologics license application are approved under OMB control numbers 0910-0001 and 0910-0338, respectively.

In the **Federal Register** of May 23, 2017 (82 FR 23581), FDA published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

User fee waivers, reductions, & refunds for drug & biological products	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FD&C Act sections 735 and 736 .....	115	1.3	150	16	2,400
FD&C Act section 736(d)(1)(D)(4) .....	25	1	25	2	50
Reconsideration requests .....	7	1	7	24	168
Appeal requests .....	1	1	1	12	12
Total .....					2,630

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 2, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-16580 Filed 8-4-17; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2017-N-0001]

### Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

**DATES:** The meeting will be held on September 13, 2017, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993-0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Serina Hunter-Thomas or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6307C, Silver Spring, MD 20993-0002; 240-402-5771, [serina.hunter-thomas@fda.hhs.gov](mailto:serina.hunter-thomas@fda.hhs.gov) and 240-402-8072, [rosanna.harvey@fda.hhs.gov](mailto:rosanna.harvey@fda.hhs.gov); or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

**Agenda:** On September 13, 2017, the VRBPAC will meet in an open session to discuss and make recommendations on the safety and effectiveness of Zoster Vaccine Recombinant, Adjuvanted, manufactured by GlaxoSmithKline Biologicals. FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

**Procedure:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 6, 2017. Oral presentations from the public will

be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 29, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 30, 2017.

**Web cast:** For those unable to attend in person, the meeting will also be web cast and will be available at the following link: <https://collaboration.fda.gov/vrbpac0917/>.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Serina Hunter-Thomas at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 1, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-16519 Filed 8-4-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-N-0085]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of the collection of information concerning cooperative manufacturing arrangements for licensed biologics.

**DATES:** Submit either electronic or written comments on the collection of information by October 6, 2017.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 6, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of October 6, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2011-N-0085 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

#### **FOR FURTHER INFORMATION CONTACT:**

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3850, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and

assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### **Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics OMB Control Number 0910-0629—Extension**

This information collection supports the Agency guidance document entitled, "Guidance for Industry: Cooperative Manufacturing for Licensed Biologics." The guidance document provides information concerning cooperative manufacturing arrangements applicable to biological products subject to licensure under section 351 of the Public Health Service Act (42 U.S.C. 262). The guidance addresses several types of manufacturing arrangements (*i.e.*, short supply arrangements, divided manufacturing arrangements, shared manufacturing arrangements, and contract manufacturing arrangements) and describes certain reporting and recordkeeping responsibilities associated with these arrangements, including the following: (1) Notification of all important proposed changes to production and facilities; (2) notification of results of tests and investigations regarding or possibly impacting the product; (3) notification of products manufactured in a contract facility; and (4) standard operating procedures.

#### *1. Notification of All Important Proposed Changes to Production and Facilities*

Each licensed manufacturer in a divided manufacturing arrangement or shared manufacturing arrangement must notify the appropriate FDA Center regarding proposed changes in the manufacture, testing, or specifications of its product, in accordance with § 601.12 (21 CFR 601.12). In the guidance, we recommend that each licensed manufacturer that proposes such a change should also inform other participating licensed manufacturer(s) of the proposed change.

For contract manufacturing arrangements, we recommend that the contract manufacturer should share with the license manufacturer all important proposed changes to production and facilities (including introduction of new products or at inspection). The license holder is responsible for reporting these changes to FDA (21 CFR 601.12).



## 2. Notification of Results of Tests and Investigations Regarding or Possibly Impacting the Product

In the guidance, we recommend the following for contract manufacturing arrangements:

- The contract manufacturer should fully inform the license manufacturer of the results of all tests and investigations regarding or possibly having an impact on the product; and
- The license manufacturer should obtain assurance from the contractor that any FDA list of inspectional observations will be shared with the license manufacturer to allow evaluation of its impact on the purity, potency, and safety of the license manufacturer's product.

## 3. Notification of Products Manufactured in a Contract Facility

In the guidance, we recommend for contract manufacturing arrangements that a license manufacturer cross reference a contract manufacturing facility's master files only in circumstances involving certain proprietary information of the contract manufacturer, such as a list of all products manufactured in a contract facility. In this situation, the license manufacturer should be kept informed of the types or categories of all products manufactured in the contract facility.

## 4. Standard Operating Procedures

In the guidance, we remind the license manufacturer that the license manufacturer assumes responsibility for compliance with the applicable product and establishment standards (21 CFR 600.3(t)). Therefore, if the license manufacturer enters into an agreement with a contract manufacturing facility, the license manufacturer must ensure that the facility complies with the applicable standards. An agreement between a license manufacturer and a contract manufacturing facility normally includes procedures to regularly assess the contract manufacturing facility's compliance. These procedures may include, but are not limited to, review of records and manufacturing deviations and defects, and periodic audits.

For shared manufacturing arrangements, each manufacturer must submit a separate biologics license application describing the manufacturing facilities and operations applicable to the preparation of that manufacturer's biological substance or product (§ 601.2(a)). In the guidance, we state that we expect the manufacturer that prepares, or is responsible for the preparation of, the product in final form for commercial distribution to assume

primary responsibility for providing data demonstrating the safety, purity, and potency of the final product. We also state that we expect the licensed finished product manufacturer to be primarily responsible for any postapproval obligations, such as postmarketing clinical trials, additional product stability studies, complaint handling, recalls, postmarket reporting of the dissemination of advertising and promotional labeling materials as required under § 601.12(f)(4), and adverse experience reporting. We recommend that the final product manufacturer establish a procedure with the other participating manufacturer(s) to obtain information in these areas.

*Description of Respondents:* Respondents to the information collection are participating licensed manufacturers, final product manufacturers, and contract manufacturers associated with cooperative manufacturing arrangements subject to the associated regulations discussed in the guidance.

*Burden Estimate:* We believe that the information collection provisions in the guidance do not create a new burden for respondents. We believe the reporting and recordkeeping provisions are part of usual and customary business practices. Licensed manufacturers would have contractual agreements with participating licensed manufacturers, final product manufacturers, and contract manufacturers, as applicable for the type of cooperative manufacturing arrangement, to address all these information collection provisions.

The guidance also refers to previously approved collections of information found in FDA regulations at parts 201, 207, 211, 600, 601, 606, 607, 610, 660, 801, 803, 807, 809, and 820 (21 CFR parts 201, 207, 211, 600, 601, 606, 607, 610, 660, 801, 803, 807, 809, and 820). The collections of information in parts 606 and 610 have been approved under OMB control numbers 0910-0116, 0910-0458, and 0910-0206; part 600 has been approved under OMB control numbers 0910-0308 and 0910-0458; parts 601 and 660 have been approved under OMB control number 0910-0338; part 803 has been approved under OMB control number 0910-0437; part 211 has been approved under OMB control number 0910-0139; part 820 has been approved under OMB control number 0910-0073; parts 207, 607, and 807 have been approved under OMB control numbers 0910-0045, 0910-0052, and 0910-0625; and parts 201, 801, and 809 have been approved under OMB control numbers 0910-0537, 0910-0572, and 0910-0485.

Dated: August 2, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-16564 Filed 8-4-17; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-N-0110]

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Advertisements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by September 6, 2017.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0686. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-5733, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Advertisements (OMB Control Number 0910-0686—Extension)

This information collection supports Agency regulations. Section 502(n) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352(n)) requires that manufacturers, packers, and distributors (sponsors) who



advertise prescription human and animal drugs, including biological products for humans, disclose in advertisements certain information about the advertised product's uses and risks. For prescription drugs and biologics, section 502(n) of the FD&C Act requires advertisements to contain "a true statement . . ." of certain information including ". . . information in brief summary relating to side effects, contraindications, and effectiveness . . ." as required by regulations issued by FDA.

FDA's prescription drug advertising regulations at § 202.1 (21 CFR 202.1) describe requirements and standards for print and broadcast advertisements. Section 202.1 applies to advertisements published in journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media such as radio, television, and telephone communication systems. Print advertisements must include a brief summary of each of the risk concepts from the product's approved package labeling (§ 202.1(e)(1)). Advertisements that are broadcast through media such as television, radio, or telephone communications systems must disclose the major risks from the product's package labeling in either the audio or audio and visual parts of the presentation (§ 202.1(e)(1)); this disclosure is known as the "major statement." If a broadcast advertisement omits the major statement, or if the major statement minimizes the risks associated with the use of the drug, the advertisement could render the drug misbranded in violation of section 502(n) of the FD&C Act, section 201(n) of the FD&C Act (21 U.S.C. 321(n)), and

FDA's implementing regulations at § 202.1(e).

Advertisements subject to the requirements at § 202.1 are subject to the PRA because these advertisements disclose information to the public. In addition, § 202.1(e)(6) and (j) include provisions that are subject to OMB approval under the PRA.

#### Reporting to FDA

Section 202.1(e)(6) permits a person who would be adversely affected by the enforcement of a provision of § 202.1(e)(6) to request a waiver from FDA for that provision. The waiver request must set forth clearly and concisely the petitioner's interest in the advertisement, the specific provision of § 202.1(e)(6) from which a waiver is sought, a complete copy of the advertisement, and a showing that the advertisement is not false, lacking in fair balance, misleading, or otherwise violative of section 502(n) of the FD&C Act.

Section 202.1(j), which sets forth requirements for the dissemination of advertisements subject to the standards in § 202.1(e), contains the following information collection that is subject to the PRA:

Under § 202.1(j)(1), a sponsor must submit advertisements to FDA for prior approval before dissemination if: (1) The sponsor or FDA has received information that has not been widely publicized in medical literature that the use of the drug may cause fatalities or serious damage; (2) FDA has notified the sponsor that the information must be part of the advertisements for the drug; and (3) the sponsor has failed to present to FDA a program for assuring that such

information will be publicized promptly and adequately to the medical profession in subsequent advertisements, or if such a program has been presented to FDA but is not being followed by the sponsor.

Under § 202.1(j)(1)(iii), a sponsor must provide to FDA a program for assuring that significant new adverse information about the drug that becomes known (*i.e.*, use of drug may cause fatalities or serious damage) will be publicized promptly and adequately to the medical profession in any subsequent advertisements.

Under § 202.1(j)(4), a sponsor may voluntarily submit advertisements to FDA for comment prior to publication.

#### Disclosures to the Public

Under § 202.1, advertisements for human and animal prescription drug and biological products must comply with the standards described in that section.

Under § 202.1(j)(1), if information that the use of a prescription drug may cause fatalities or serious damage has not been widely publicized in the medical literature, a sponsor must include such information in the advertisements for that drug.

In the **Federal Register** of May 23, 2017 (82 FR 23574), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. One comment was received but did not respond to the information collection topics solicited in the notice and therefore we do not discuss it here.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

21 CFR section or activity	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
<b>CDER</b>					
202.1(e)(6); waiver request .....	1	1	1	12	12
202.1(j)(1); submission of advertisement .....	1	1	1	2	2
202.1(j)(1)(iii); assuring that adverse information be publicized .....	1	1	1	12	12
202.1(j)(4); voluntary submission of ad to FDA .....	71	6.97	495	20	9,900
<b>CBER</b>					
202.1(e)(6); waiver request .....	0	0	0	12	0
202.1(j)(1); submission of advertisement .....	0	0	0	2	0
202.1(j)(1)(iii); assuring that adverse information be publicized .....	0	0	0	12	0
202.1(j)(4); voluntary submission of ad to FDA .....	9	8	72	20	1,440
<b>CVM</b>					
202.1(e)(6); waiver request .....	0	0	0	12	0
202.1(j)(1); submission of advertisement .....	0	0	0	2	0

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>—Continued

21 CFR section or activity	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
202.1(j)(1)(iii); assuring that adverse information be publicized .....	0	0	0	12	0
202.1(j)(4); voluntary submission of ad to FDA .....	5	1	5	20	100
Total .....					11,466

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN <sup>1</sup>

21 CFR section or activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
<b>CDER</b>					
202.1; ad prepared in accordance with part 202 .....	394	105.3	41,494	400	16,597,600
202.1(j)(1); info. included re. fatalities or serious damage ..	1	1	1	40	40
<b>CBER</b>					
202.1; ad prepared in accordance with part 202 .....	47	63.4	2,984	400	1,193,600
202.1(j)(1); info. included re. fatalities or serious damage ..	0	0	0	40	0
<b>CVM</b>					
202.1; ad prepared in accordance with part 202 .....	25	36	900	400	360,000
202.1(j)(1); info. included re. fatalities or serious damage ..	0	0	0	40	0
Total .....					18,151,240

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection.

Dated: August 2, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-16607 Filed 8-4-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

**Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: AIDS Drug Assistance Program Data Report, OMB No. 0915-0345—Extension**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for

review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received no later than September 6, 2017.

**ADDRESSES:** Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

*Information Collection Request Title:* AIDS Drug Assistance Program Data Report OMB No. 0915-0345—Extension.

**Abstract:** HRSA's AIDS Drug Assistance Program (ADAP) is funded through the Ryan White HIV/AIDS Program (RWHAP), Part B, Title XXVI of the Public Health Service Act, which provides grants to states and territories. The ADAP provides medications for the treatment of HIV. Program funds may also be used to purchase health insurance for eligible clients and for services that enhance access, adherence, and monitoring of HIV drug treatments. The following states, territories, and Pacific Island jurisdictions are eligible to apply for RWHAP ADAP funding: All 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. As part of the funding requirements, ADAP grant recipients submit reports concerning information on patients served, eligibility requirements, pharmaceuticals prescribed, pricing and other sources of support to provide HIV medication treatment, cost data, and coordination with Medicaid. The ADAP Data Report (ADR) will be submitted

annually and consists of a Grantee Report and a client-level data file. HRSA is requesting an extension of the ADR with minor revisions to patient/client eligibility requirements, which will align data reporting with the Ryan White HIV/AIDS Services Report. Specifically, within Client Variables in the client-level data file:

- Deletion of variable ID 7, “Transgender”
- Addition of “Transgender Male to Female”, “Transgender Female to Male”, and “Transgender Other” as response options for variable ID 6, “Gender”

*Need and Proposed Use of the Information:* The RWHAP requires the submission of annual reports by the Secretary of Department of Health and

Human Services (HHS) to the appropriate committees of Congress. The collection of recipient-level and client level data enables HRSA to more effectively respond to requests from the Secretary of HHS. In addition, client-level information is needed by HRSA to review program performance and inform strategic planning. Client-level data is also needed to support the monitoring of national goals to end the HIV epidemic: Reduce new HIV infections; increase access to care and optimize health outcomes for people living with HIV; reduce HIV-related health disparities and health inequities; and achieve a more coordinated national response to the HIV epidemic.

*Likely Respondents:* State ADAP grant recipients of Ryan White HIV/AIDS Program Part B funding.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

#### TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee Report .....	54	1	54	6	324
Client-level File .....	54	1	54	81	4,374
Total .....	* 54	.....	54	.....	4,698

\* The same respondents complete the Grantee Report and the Client-level Report.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2017-16495 Filed 8-4-17; 8:45 am]

BILLING CODE 4165-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the program in general, contact Lisa L. Reyes, Acting Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357-6400. For information on HRSA's role in the program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Rm. 08N146B, Rockville, MD 20857; (301) 443-6593, or visit our Web site at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

**SUPPLEMENTARY INFORMATION:** The program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions

as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested outside the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that “[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.” Set forth below is a list of petitions received by HRSA on June 1, 2017, through June 30, 2017. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and

case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master “shall afford all interested persons an opportunity to submit relevant, written information” relating to the following:

1. The existence of evidence “that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,” and

2. Any allegation in a petition that the petitioner either:

a. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by” one of the vaccines referred to in the table, or

b. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the table but which was caused by a vaccine” referred to in the table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court’s caption (Petitioner’s Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: July 26, 2017.

**George Sigounas,**  
*Administrator.*

#### List of Petitions Filed

1. Sean Oberheim, Littleton, Colorado, Court of Federal Claims No: 17–0725V
2. Alexander M. Beiting, Omaha, Nebraska, Court of Federal Claims No: 17–0726V
3. Ling Chen, Rosedale, Maryland, Court of Federal Claims No: 17–0728V
4. Gerardo Cabello, Los Ranchos de Albuquerque, New Mexico, Court of Federal Claims No: 17–0730V
5. Thomas Hettenbach, Orlando, Florida, Court of Federal Claims No: 17–0731V
6. Alan Peterson, La Crosse, Wisconsin, Court of Federal Claims No: 17–0732V
7. Christopher Hill, San Diego, California, Court of Federal Claims No: 17–0734V
8. Kebba Dampha, East Lansing, Michigan, Court of Federal Claims No: 17–0735V
9. Carolyn Orrell, Charlotte, North Carolina, Court of Federal Claims No: 17–0736V
10. Rachel Knura on behalf of Kole Knura, Munster, Indiana, Court of Federal Claims No: 17–0737V
11. Jennifer Kreger, Zimmerman, Minnesota, Court of Federal Claims No: 17–0742V
12. Michael J. Gordon on behalf of J.M.G., Santa Monica, California, Court of Federal Claims No: 17–0743V
13. Cafilliar Perdue, Jackson, Mississippi, Court of Federal Claims No: 17–0746V
14. Jasmin A. Lopez, Rockville, Connecticut, Court of Federal Claims No: 17–0748V
15. Ann E. Kleva, Notre Dame, Indiana, Court of Federal Claims No: 17–0749V
16. Penny Lynn Burke, North Bend, Washington, Court of Federal Claims No: 17–0750V
17. Katherine Tierney and Kevin Tierney on behalf of C. T., Brighton, Michigan, Court of Federal Claims No: 17–0751V
18. Selena Despotovic, St. Petersburg, Florida, Court of Federal Claims No: 17–0752V
19. Agnes Johns, St. Petersburg, Florida, Court of Federal Claims No: 17–0753V
20. Ronald Devingo, Toms River, New Jersey, Court of Federal Claims No: 17–0754V
21. Joseph Baldwin, Franklin, Tennessee, Court of Federal Claims No: 17–0756V
22. Tracy Middlebrooks, Scottsboro, Alabama, Court of Federal Claims No: 17–0757V
23. Stephen Waldorf, Washington, District of Columbia, Court of Federal Claims No: 17–0758V
24. Nicholas Gallelli, East Orange, New Jersey, Court of Federal Claims No: 17–0759V
25. Dorothy Rowan, Boise, Idaho, Court of Federal Claims No: 17–0760V
26. Lisa Knapp, Wichita Falls, Texas, Court of Federal Claims No: 17–0764V
27. Barbara Wellen, Port Orange, Florida, Court of Federal Claims No: 17–0767V
28. Mark Simmer, Washington, District of Columbia, Court of Federal Claims No: 17–0769V
29. Hedy Glover, St. Louis, Missouri, Court of Federal Claims No: 17–0770V
30. Tammy L. Douse, Kettle Falls, Washington, Court of Federal Claims No: 17–0771V
31. Rebecca DeRitis on behalf of B.D., New York, New York, Court of Federal Claims No: 17–0772V
32. Carlos Orduz, Yonkers, New York, Court of Federal Claims No: 17–0773V
33. Amy NMN Hayes on behalf of A. T. A., Angier, North Carolina, Court of Federal Claims No: 17–0774V
34. Richard Scott, Indianapolis, Indiana, Court of Federal Claims No: 17–0775V
35. Diane Fedorchak, Washington, District of Columbia, Court of Federal Claims No: 17–0776V
36. Constance J. Sabins, Harrisburg, North Carolina, Court of Federal Claims No: 17–0778V
37. Jerry Sanders, Ozark, Alabama, Court of Federal Claims No: 17–0779V
38. Robert Sauer, Pennington, New Jersey, Court of Federal Claims No: 17–0780V
39. Pamela Kirby, Washington, District of Columbia, Court of Federal Claims No: 17–0782V
40. Dionni De La Cruz, Washington, District of Columbia, Court of Federal Claims No: 17–0783V
41. Ashley Potts, Jacksonville, Florida, Court of Federal Claims No: 17–0784V
42. John Colapietro, Cocoa Beach, Florida, Court of Federal Claims No: 17–0785V
43. Valisha Carrington, San Antonio, Texas, Court of Federal Claims No: 17–0786V
44. Kristi Arrant, Lake Charles, Louisiana, Court of Federal Claims No: 17–0788V
45. Jason Kahn, West Lafayette, Indiana, Court of Federal Claims No: 17–0789V
46. Anna Ballard, Macon, Georgia, Court of Federal Claims No: 17–0790V
47. Karen Williams, Winfield, Alabama, Court of Federal Claims No: 17–0791V
48. Laura Kalajdzic and Bojan Kalajdzic on behalf of A. K., Aurora, Colorado, Court of Federal Claims No: 17–0792V

49. Kathleen Knox, Lancaster, South Carolina, Court of Federal Claims No: 17-0794V
50. Deloris Harrell, Montgomery, Alabama, Court of Federal Claims No: 17-0795V
51. Leo Cahill on behalf of Valena Yvonne Cahill, Washington, District of Columbia, Court of Federal Claims No: 17-0796V
52. Samuel Hutchens, Scottsdale, Arizona, Court of Federal Claims No: 17-0797V
53. Ashok Pahwa, Rye Brook, New York, Court of Federal Claims No: 17-0799V
54. Daron Nelson, Layton, Utah, Court of Federal Claims No: 17-0800V
55. Jodie L. Paschall-Majerus, Vancouver, Washington, Court of Federal Claims No: 17-0801V
56. Charlotte Porch, Houston, Texas, Court of Federal Claims No: 17-0802V
57. Charles Randall, Hillsdale, Michigan, Court of Federal Claims No: 17-0803V
58. Julia Hayes, West Chester, Pennsylvania, Court of Federal Claims No: 17-0804V
59. Suzanne Dyer, Little River, South Carolina, Court of Federal Claims No: 17-0805V
60. William Fuller, Summerville, South Carolina, Court of Federal Claims No: 17-0806V
61. Teresa Fowler, Boston, Massachusetts, Court of Federal Claims No: 17-0809V
62. Alyssa Hilt, Dresher, Pennsylvania, Court of Federal Claims No: 17-0810V
63. Catherine Fry, Greenbelt, Maryland, Court of Federal Claims No: 17-0811V
64. Lynette Pestel, Springfield, Illinois, Court of Federal Claims No: 17-0814V
65. Shirley Garrett, Pidgeon Forge, Tennessee, Court of Federal Claims No: 17-0815V
66. Lilia Tellez-Garcia, Dresher, Pennsylvania, Court of Federal Claims No: 17-0816V
67. Christopher O'Hern, Washington, District of Columbia, Court of Federal Claims No: 17-0818V
68. Cherlanda Sheppard, Detroit, Michigan, Court of Federal Claims No: 17-0819V
69. Heidi Theis, Ephrata, Pennsylvania, Court of Federal Claims No: 17-0820V
70. Karen Hopseker, Rochester, New York, Court of Federal Claims No: 17-0821V
71. Felica Thomas on behalf of Zaire Corvell Thomas, Deceased, Madison, Wisconsin, Court of Federal Claims No: 17-0822V
72. Deanna Williams, San Jose, California, Court of Federal Claims No: 17-0830V
73. Deborah Forbes, Arlington, Texas, Court of Federal Claims No: 17-0832V
74. Audrey Rebollo, Norristown, Pennsylvania, Court of Federal Claims No: 17-0833V
75. Kendra Calvert on behalf of S. C., Fort Worth, Texas, Court of Federal Claims No: 17-0834V
76. Brent Langley, Mechanicsburg, Pennsylvania, Court of Federal Claims No: 17-0837V
77. Judy Echols, Birmingham, Alabama, Court of Federal Claims No: 17-0838V
78. Connie Osborn, Washington, District of Columbia, Court of Federal Claims No: 17-0839V
79. Patricia M. Browne, Rincon, Georgia, Court of Federal Claims No: 17-0840V
80. Timothy McClusky, Boston, Massachusetts, Court of Federal Claims No: 17-0841V
81. Michael Goodin, Portsmouth, New Hampshire, Court of Federal Claims No: 17-0844V
82. Bambi Pascuzzi, Trafford, Pennsylvania, Court of Federal Claims No: 17-0846V
83. Zachary Childree and Megan Akers on behalf of B. C., Milton, Florida, Court of Federal Claims No: 17-0848V
84. Patricia Dillon, San Francisco, Alaska, Court of Federal Claims No: 17-0849V
85. Joshua Yeargin and Sheri Yeargin on behalf of A Y, Washington, District of Columbia, Court of Federal Claims No: 17-0850V
86. Jeffrey Levine and Toni Ann Levine on behalf of A. L., Clifton, New Jersey, Court of Federal Claims No: 17-0851V
87. Roseanna Johnson, Little Rock, Arkansas, Court of Federal Claims No: 17-0852V
88. Chelsie Decker, Indianapolis, Indiana, Court of Federal Claims No: 17-0853V
89. Reynaldo Belmonte, Jr., North Bend, Washington, Court of Federal Claims No: 17-0856V
90. Erwin Mansilla, Gardena, California, Court of Federal Claims No: 17-0861V
91. Nicole Carion, Washington, District of Columbia, Court of Federal Claims No: 17-0862V
92. Ashley Scott, Washington, District of Columbia, Court of Federal Claims No: 17-0863V
93. Lindsey Kueng, Washington, District of Columbia, Court of Federal Claims No: 17-0864V
94. Billy R. Dehart, Leesville, Louisiana, Court of Federal Claims No: 17-0870V
95. Katie Wiggins, Washington, District of Columbia, Court of Federal Claims No: 17-0871V
96. Stephanie Easterling on behalf of G. E., New York, New York, Court of Federal Claims No: 17-0872V
97. Benita Goldstein on behalf of Stewart G. Goldstein, Deceased, West Palm Beach, Florida, Court of Federal Claims No: 17-0873V
98. Thomas Zerwas, Elk River, Minnesota, Court of Federal Claims No: 17-0874V
99. Brandy McCoy on behalf of E. M., Mooresville, North Carolina, Court of Federal Claims No: 17-0875V
100. Virginia Lara, Choctaw, Oklahoma, Court of Federal Claims No: 17-0880V
101. Jodi Eads, Decatur, Indiana, Court of Federal Claims No: 17-0881V
102. Deanne Doane, Houston, Texas, Court of Federal Claims No: 17-0882V
103. Gladys Highfield, Dongola, Illinois, Court of Federal Claims No: 17-0883V
104. Martha Tapia, Rialto, California, Court of Federal Claims No: 17-0884V
105. Carroll Spicer, Eugene, Oregon, Court of Federal Claims No: 17-0885V
106. Christina Nelson, Manhattan, Kansas, Court of Federal Claims No: 17-0886V
107. Michael L. Winters, Knoxville, Tennessee, Court of Federal Claims No: 17-0887V
108. Juanita Cruvey, Kenosha, Wisconsin, Court of Federal Claims No: 17-0888V
109. Jackie Dwayne Damron on behalf of Jack Damron, Deceased, Hendersonville, Tennessee, Court of Federal Claims No: 17-0890V
110. Rochelle Belt, Philadelphia, Pennsylvania, Court of Federal Claims No: 17-0891V
111. Barbara Fantell and Scott Fantell on behalf of H. F., Cape Coral, Florida, Court of Federal Claims No: 17-0892V
112. Katie R. Peterson, Salt Lake City, Utah, Court of Federal Claims No: 17-0893V
113. Derek Molina, Mt. Pleasant, Texas, Court of Federal Claims No: 17-0895V
114. Destiny Duncan, Bluffton, South Carolina, Court of Federal Claims No: 17-0896V
115. Timothy Woods, Anamosa, Iowa, Court of Federal Claims No: 17-0897V

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Resources and Services Administration****Meeting of the Advisory Commission on Childhood Vaccines**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, notice is hereby given that a meeting is scheduled for the Advisory Commission on Childhood Vaccines (ACCV). This meeting will be open to the public. Information about the ACCV and the agenda for this meeting can be obtained by accessing the following Web site: <http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html>.

**DATES:** The meeting will be held on September 8, 2017, at 10:00 a.m. EDT.

**ADDRESSES:** The address for the meeting is 5600 Fishers Lane, Rockville, MD, Conference Room 5N54. The public can join the meeting by:

1. (In Person) Persons interested in attending the meeting in person are encouraged to submit a written notification to: Annie Herzog, Division of Injury Compensation Programs (DICP), Healthcare Systems Bureau (HSB), HRSA, Rm. 8N146B, 5600 Fishers Lane, Rockville, Maryland 20857 or email: [aherzog@hrsa.gov](mailto:aherzog@hrsa.gov). Since this meeting is held in a federal government building, attendees will need to go through a security check to enter the building and participate in the meeting. This written notification is encouraged so that a list of attendees can be provided to make entry through security quicker. Persons may attend in person without providing written notification, but their entry into the building may be delayed due to security checks and the requirement to be escorted to the meeting by a federal government employee. To request an escort to the meeting after entering the building, call Amber Johnson at (301) 443-0129.

2. (Audio Portion) Call the conference phone number (800) 369-1833 and providing the following information:

Leader Name: Dr. Narayan Nair  
Password: 6706374

3. (Visual Portion) Connect to the ACCV Adobe Connect Pro Meeting using the following URL: <https://hrsa.connectsolutions.com/accv/>. Participants should call and connect 15 minutes prior to the meeting to allow

time for the logistics to be set-up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: [https://hrsa.connectsolutions.com/common/help/en/support/meeting\\_test.htm](https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm).

Get a quick overview of the software at: [http://www.adobe.com/go/connectpro\\_overview](http://www.adobe.com/go/connectpro_overview).

**FOR FURTHER INFORMATION CONTACT:**

Anyone requesting information regarding the ACCV should contact Annie Herzog, Program Analyst, DICP, HRSA in one of three ways: (1) Send a request to the following address: Annie Herzog, Program Analyst, DICP, HRSA, 5600 Fishers Lane, 8N146B, Rockville, Maryland 20857; (2) call (301) 443-6593; or (3) send an email to [aherzog@hrsa.gov](mailto:aherzog@hrsa.gov).

The ACCV will meet on Friday, September 8, 2017, beginning at 10:00 a.m. in the 5600 Fishers Lane Building, Rockville, Maryland 20857; however, meeting times and locations could change. For the latest information regarding meeting start time and location, please check the ACCV Web site: <http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html>.

**SUPPLEMENTARY INFORMATION:** The ACCV was established by section 2119 of the Public Health Service Act (the Act) (42 U.S.C. 300aa-19), as enacted by Public Law (Pub. L.) 99-660, and as subsequently amended, and advises the Secretary of HHS (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

Activities of the ACCV also include: Recommending changes to the Vaccine Injury Table on its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine

injuries which should be conducted to carry out the VICP.

The agenda items for the meeting will include, but are not limited to, updates from DICP, Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (<http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html>) prior to the meeting. Agenda items are subject to change as priorities dictate.

Members of the public will have the opportunity to provide comments. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to make oral comments or provide written comments to the ACCV should be sent to Annie Herzog using the address and phone number above by September 4, 2017. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Annie Herzog, using the address and phone number above at least 10 days prior to the meeting.

**Amy McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2017-16582 Filed 8-4-17; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030**

**AGENCY:** Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Health and Human Services (HHS) announces the next meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (Committee). The meeting is open to the public and will be held in the Washington, DC metropolitan area. The Committee is working to accomplish its mission to provide independent advice based on current scientific evidence for

use by the Secretary of the U.S. Department of Health and Human Services or a designated representative in the development of *Healthy People 2030*.

**DATES:** The Committee will meet on September 6, 2017, from 8:30 a.m. to 5:00 p.m. Eastern Time (ET), and September 7, 2017, from 8:30 a.m. to 2:30 p.m. ET.

**ADDRESSES:** The meeting will be held at the 20 F Street NW. Conference Center, located at 20th F Street NW., Washington, DC 20001. To register to attend the meeting or deliver oral public testimony, please visit the Healthy People Web site at <https://www.healthypeople.gov>.

**FOR FURTHER INFORMATION CONTACT:** Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Rm. LL-100, Rockville, MD 20852, (240) 453-8280 (telephone), (240) 453-8281 (fax). Additional information is available on the Healthy People Web site at <https://www.healthypeople.gov>.

**SUPPLEMENTARY INFORMATION:**

*Appointed Committee Members:* The names and biographies of the appointed Committee members are available at <https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee>.

*Purpose of Meeting:* In accordance with Federal Advisory Committee Act and to promote transparency of the process, deliberations of the Committee will occur in a public forum. At this meeting, the Committee will continue its deliberations from the last public meeting.

*Background:* The Committee, a federal advisory committee, is charged with issuing recommendations for the Secretary regarding the development and implementation of national health promotion and disease prevention objectives for 2030. The Committee will discuss the nation's health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will develop recommendations regarding the criteria for identifying a more focused set of measurable, nationally representative objectives for improving the health of the nation by the year 2030 and recommendations for engaging

stakeholders in the implementation and achievement of the objectives. The Committee's advice must assist the Secretary in reducing the number of objectives, while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data. Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 health objectives will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

*Meeting Agenda:* The meeting agenda will include (a) opportunity for the public to give oral testimony, (b) review of Committee work since the last public meeting, and (c) plans for future Committee work.

*Public Participation at Meeting:* Members of the public are invited to attend the Committee meeting. To attend the Committee meeting, individuals must pre-register at the Healthy People Web site at <http://www.healthypeople.gov>. Registrations must be completed by 5:00 p.m. ET on September 1, 2017. Space for the meeting is limited and registration will be accepted until maximum room capacity is reached. A waiting list will be maintained should registrations exceed room capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available. Registration questions may be directed to: Jim Nakayama at [events@nakamotogroup.com](mailto:events@nakamotogroup.com), or (240) 672-4011.

*Public Comments and Meeting Documents:* An opportunity to present to the Committee oral comments regarding the proposed Healthy People 2030 vision, mission, overarching goals, foundational principles, and plan of action will be provided at this meeting. Those wishing to present oral comment must pre-register at the Healthy People Web site at [www.healthypeople.gov](http://www.healthypeople.gov) by

5:00 p.m. ET, on August 21, 2017, and must submit a written copy of their oral testimony by 5:00 p.m. ET, on August 30, 2017, to Jim Nakayama at [events@nakamotogroup.com](mailto:events@nakamotogroup.com). The opportunity to deliver oral testimony is limited. Those presenting oral comments will have two (2) minutes to address the Committee. Guidelines for public comment submissions can be viewed at <https://www.healthypeople.gov/2020/About-Healthy-People/Development-Healthy-People-2030/Public-Comment>. Written public comments can be submitted and/or viewed at <https://www.healthypeople.gov/2020/About-Healthy-People/Development-Healthy-People-2030/Public-Comment/Items-for-comment>. Documents pertaining to Committee deliberations, including meeting agendas and summaries are available at <https://www.healthypeople.gov/2020/About-Healthy-People/Development-Healthy-People-2030/Committee-Meetings>. Questions regarding public comment may be directed to: Jim Nakayama at [events@nakamotogroup.com](mailto:events@nakamotogroup.com) or (240) 672-4011.

*Authority:* 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92-463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: August 2, 2017.

**Don Wright,**

*Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).*

[FR Doc. 2017-16608 Filed 8-4-17; 8:45 am]

**BILLING CODE 4150-32-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD); Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. A portion of this meeting will be closed to the public in accordance with the provisions set forth in sections



552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review and discussion of grant applications. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

*Name of Committee:* National Advisory Child Health and Human Development Council.

*Date:* September 14, 2017.

*Open:* September 14, 2017.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* The agenda will include opening remarks, administrative matters, Director's Report, Division of Extramural Research Report and, other business of the Council.

*Place:* National Institutes of Health, Building 31, C-Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 14, 2017.

*Time:* 1:00 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C-Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Della Hann, Ph.D., Director, Division of Extramural Research, Eunice Kenney Shriver, National Institute of Child Health and Human Development, NIH, 6710 Rockledge Blvd., MSC 7002, Bethesda, MD 20892, 301-496-8535.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

In order to facilitate public attendance at the open session of Council in the main meeting room, Conference Room 6, please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301-496-0536 to make your reservation, additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: <http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx>.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS).

Dated: August 1, 2017.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-16520 Filed 8-4-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; JHU Translational Immuno-Engineering BTRC (2018/01).

*Date:* September 26, 2017.

*Time:* 09:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Blvd., Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451-3398, [hayesj@mail.nih.gov](mailto:hayesj@mail.nih.gov).

Dated: August 1, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-16533 Filed 8-4-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Pilot Clinical Trials Targeting HIV-1 Reservoirs in Children (U01).

*Date:* August 23, 2017.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* J. Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Rm. 3G11A, National Institutes of Health/ NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-9823, 240-669-5045, [sundstromj@niaid.nih.gov](mailto:sundstromj@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 1, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-16523 Filed 8-4-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Asthma and Allergic Diseases Cooperative Research Centers.

*Date:* September 7–14, 2017.

*Time:* 12:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, Division of Extramural Activities, Room 3G41, 5601 Fishers Lane, Bethesda, MD 20892–7616, 240–669–5067, [pamstad@niaid.nih.gov](mailto:pamstad@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 1, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–16522 Filed 8–4–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive Patent License: The Development of a Bispecific, Biparatopic Antibody-Drug Conjugate to GPC3 for the Treatment of Human Liver Cancers

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Cancer Institute, National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to Salubris Biotherapeutics, Inc. (Salubris), located in Gaithersburg, Maryland, to practice the inventions embodied in the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** Only written comments and/or applications for a license which are received by the NCI Technology Transfer Center on or before August 22, 2017 will be considered.

**ADDRESSES:** Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM

1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702; Telephone: (240) 276–6467; Email: [david.lambertson@nih.gov](mailto:david.lambertson@nih.gov).

**SUPPLEMENTARY INFORMATION:** The following represents the intellectual property to be licensed under the prospective agreement: (A) U.S. Provisional Patent Application 61/654,232 entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–US–01], PCT Patent Application PCT/US2013/043633 entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–PCT–02], Chinese Patent Application 201380039993.7 entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–CN–03], Japanese Patent Application 2015–515243 entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–JP–04], South Korean Patent Application 10–2014–7037046 entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–KR–05], Singapore Patent Application 11201407972R entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–SG–06], and United States Patent 9,409,994 entitled “High-affinity Monoclonal Antibodies To Glypican-3 And Use Thereof” [HHS Ref. E–136–2012/0–US–07], and all continuing U.S. and foreign patents/patent applications for the technology family; and (B) U.S. Provisional Patent Application 61/477,020 entitled “Human Monoclonal Antibody Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–US–01], PCT Patent Application PCT/US2012/034186 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–PCT–02], Chinese Patent 201280029201.3 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–CN–03], European Patent 2699603 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–EP–04], and validated in France [HHS Ref. E–130–2011/0–FR–09], Germany [HHS Ref. E–130–2011/0–DE–08] and the United Kingdom [HHS Ref. E–130–2011/0–GB–10] and lodged in Hong Kong [HHS Ref. E–130–2011/0–HK–11], United States Patent 9,206,257 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–US–05], United States Patent 9,394,364,

entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–US–06], European Patent Application 15188264.4 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–EP–07], United States Patent Application 15/090,873 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–US–12], Chinese Patent Application 201610290837.3 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–CN–13], European Patent Application 16166924.7 entitled “Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof” [HHS Ref. E–130–2011/0–EP–14], and all continuing U.S. and foreign patents/patent applications for the technology family, to Salubris. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

With respect to persons who have an obligation to assign their right, title and interest to the Government of the United States of America, the patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective Exclusive Patent License territory may be worldwide for the following field of use:

The development and commercialization of a bispecific, biparatopic antibody-drug conjugate (ADC) having:

(1) The CDR sequences of both the hYP7 and HN3 anti-GPC3 monoclonal antibodies; and

(2) a microtubule inhibitor payload including, but not limited to, auristatin and mertansine;

for the treatment of human liver cancer. The licensed field of use excludes any (a) non-specified immunoconjugates, including, but not limited to, chimeric antigen receptors (CARs) and variants thereof, immunotoxins, ADCs with payloads that are not microtubule inhibitors, and monospecific versions of the aforementioned immunoconjugates, and (b) unconjugated antibodies.

The present inventions to be licensed concern monoclonal antibodies that are specific for the cell surface domain of GPC3: HN3 and hYP7. These antibodies can potentially be used for the treatment of GPC3-expressing cancers such as HCC. In the subject situation, the antibodies can be used in conjunction to target a toxic payload specifically to GPC3-expressing cells, leading to the selective destruction of the cancerous cells.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404.

The prospective Exclusive Patent License will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act*, 5 U.S.C. 552.

Dated: July 25, 2017.

**Richard U. Rodriguez,**

*Associate Director, Technology Transfer Center, National Cancer Institute.*

[FR Doc. 2017-16525 Filed 8-4-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Drugs Targeting Pathways of Aging.

*Date:* September 13, 2017.

*Time:* 3:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anita H. Undale, Ph.D., MD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda,

MD 20892, 240-747-7825, [anita.undale@nih.gov](mailto:anita.undale@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-16521 Filed 8-4-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive Patent License: MicroRNA Therapeutics for Treating Squamous Cell Carcinomas

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to MiRecule, Inc., located in Rockville, Maryland, to practice the inventions embodied in the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** Only written comments and/or applications for a license which are received by the NHLBI Office of Technology Transfer and Development August 22, 2017 will be considered.

**ADDRESSES:** Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892-2479, phone number 301-435-5019, or [shmilovm@mail.nih.gov](mailto:shmilovm@mail.nih.gov).

**SUPPLEMENTARY INFORMATION:** The following represents the intellectual property to be licensed under the prospective agreement: HHS Ref. No. E-043-2016/0, including provisional patent application 62/304,844 filed March 7, 2016 and International Patent Application PCT/US2017/021178 filed March 7, 2017 both entitled "MicroRNAs And Methods Of Their Use," and all continuing U.S. and foreign patents/patent applications for the technology family, to MiRecule. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

With respect to persons who have an obligation to assign their right, title and interest to the Government of the United States of America, the patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective Exclusive Patent License territory may be worldwide for the following field of use: MicroRNA therapeutics for squamous cell carcinomas.

The invention relates to the use of microRNAs (miRs), miR mimics, miR mimetics, and a combination thereof as anti-proliferative cancer therapeutics. In this case, miRs will be administered in a form complexed with nanoparticles in the form of liposomes decorated with anti-transferrin receptor (TfR) scFv fragments. Generally, miRs are a highly conserved class of small RNA molecules (about 18-24bp) that primarily bind the 3'-UTR region of mRNA molecules and either block translation or promote nuclease mediated degradation. The inventors found that mimics or mimetics derived from several members of the miR-30-5p family; and miR-30a-5p and miR-30e-5p, have potential as anti-proliferative therapeutics in cancers including but not limited to squamous cell carcinomas and currently have a CRADA with NIDCD exploring their uses in treating head and neck squamous cell carcinoma (HNSC). In an *in vivo* proof-of-concept using a murine xenograft tumor model for HNSC, the inventors demonstrated that intraperitoneal administration of a nanoliposome formulated with an anti-transferrin receptor antibody fragment and a synthetic miR-30a-5p mimic strongly delayed tumor growth. Other anti-cancer miR therapeutic mimics can be combines with miR-30 including miR-145-5p, miR-26a-5p, miR-26b-5p, miR-375-5p, miR-30b-5p, miR-30d-5p, or miR-338-3p. Modes of administration can be by intravenous injection, intraperitoneal injection, subcutaneous injection, or intratumoral injection. Therapeutic design employing miR mimicry focuses on nucleic acid modifications that exhibit better cytotoxicity than unmodified miRs or commercially available mimics. For example, it is accepted that modification of the 2' position of individual nucleic acids in an oligonucleotide can improve affinity to complementary strands and confer resistance to nucleases and reduce adverse immunogenic reactions. By way of another example, bases 1, 6, and 20 of a passenger strand miR can be mutated to increase the stability of the resulting duplex; however, these mutation sites may differ from one

therapeutic miR to another. Tumor suppressing miR mimics can be synergistically combined with standard chemo- and radiation therapies in an anti-cancer regimen.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective Exclusive Patent License will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the NHLBI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act*, 5 U.S.C. 552.

Dated: July 25, 2017.

**Michael Shmilovich,**

*Senior Licensing and Patenting Manager,  
NHLBI Office of Technology Transfer and  
Development.*

[FR Doc. 2017-16524 Filed 8-4-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2017-0114]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0062

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting a Reinstatement, without change, of a previously approved collection for which approval has expired for the following collection of information: 1625-0062, Approval of Alterations to Marine Portable Tanks; Approval of Non-Specification Portable Tanks without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 6, 2017.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2017-0114] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must

contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2017-0114], and must be received by October 6, 2017.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

#### Information Collection Request

**Title:** Approval of Alterations to Marine Portable Tanks; Approval of Non-Specification Portable Tanks.

**OMB Control Number:** 1625-0062.

**Summary:** The information will be used to evaluate the safety of proposed alterations to marine portable tanks and non-specification portable tank designs used to transfer hazardous materials during offshore operations.

**Need:** Approval by the Coast Guard of alterations to marine portable tanks under 46 CFR part 64 ensures that the altered tank retains the level of safety to which it was originally designed.

**Forms:** Not applicable.

**Respondents:** Owners of marine portable tanks and owners/designers of non-specification portable tanks.

**Frequency:** On occasion.

**Hour Burden Estimate:** The estimated annual burden remains 18 hours a year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 1, 2017.

**Marilyn L. Scott-Perez,**  
*U.S. Coast Guard, Chief, Office of Information Management.*

[FR Doc. 2017-16503 Filed 8-4-17; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****[Docket No. USCG–2016–0938]****Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0074****AGENCY:** Coast Guard, DHS.**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625–0074, Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before September 6, 2017

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2016–0938] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., STOP 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995;

44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2016–0938], and must be received by September 5, 2017.

**Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0074.

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (81 FR 95155, December 27, 2016) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

**Information Collection Request**

*Title:* Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

*OMB Control Number:* 1625–0074.

*Summary:* This collection requires the submission of identifying information such as a vessel's name and identification number, and of the owner's choice whether or not to pay fees for future years. A written request to the Coast Guard is necessary.

*Need:* The Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508], which amended 46 U.S.C. 2110, requires the Coast Guard to collect user fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure that we get that information and manage it efficiently.

*Forms:* None.

*Respondents:* Owners of vessels.

*Frequency:* Annually.

*Hour Burden Estimate:* The estimated burden has increased from 2,783 hours to 2,999 hours a year due to an increase in the estimated annual number of responses.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 1, 2017.

**Marilyn L. Scott-Perez,**

*U.S. Coast Guard, Chief, Office of Information Management.*

[FR Doc. 2017–16504 Filed 8–4–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[Docket No. USCG–2017–0124]

**Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0057****AGENCY:** Coast Guard, DHS.**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting a Reinstatement, without change, of a previously approved collection for which approval has expired for the following collection of information: 1625–0057, Small Passenger Vessels—Title 46 Subchapters K and T without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 6, 2017.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2017–0124] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains

information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2017–0124], and must be received by October 6, 2017.

**Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

**Information Collection Request**

**Title:** Small Passenger Vessels—Title 46 Subchapters K and T.

**OMB Control Number:** 1625–0057.

**Summary:** The information requirements are necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

**Need:** Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribed regulations for the design, construction, alteration, repair and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

**Forms:** CG–841, Certificate of Inspection; CG–854, Temporary Certificate of Inspection; CG–948, Permit to Proceed to Another Port for Repairs; CG–949, Permit to Carry Excursion Party; CG–3752, Application for Inspection of U.S. Vessel; CG–5256, U.S. Coast Guard Inspected Small Passenger Vessel.

**Respondents:** Owners and operators of small passenger vessels.

**Frequency:** On occasion.

**Hour Burden Estimate:** The estimated burden has decreased from 399,420 hours to 397,124 hours a year due to a decrease in the estimated annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 1, 2017.

**Marilyn L. Scott-Perez,**

*U.S. Coast Guard, Chief, Office of Information Management.*

[FR Doc. 2017–16505 Filed 8–4–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR–6039–N–01]

**Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice provides guidance on issues arising from Community Development Block Grant disaster recovery (CDBG–DR) funds.

Specifically, this notice allocates additional funds for 2015 and 2016 disasters; establishes an allocation framework for disasters that occur in 2017 and later; provides waivers for previously funded National Disaster Resilience Competition grants and for grantees that received certain CDBG–DR funding; provides a waiver for Rebuild By Design activities; and establishes an alternative requirement that creates new national objective criteria for grantees undertaking CDBG–DR buyouts and housing incentives.

**DATES:** This notice will apply on: August 14, 2017.

**FOR FURTHER INFORMATION CONTACT:** Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number

via TTY by calling the Federal Relay Service at (800) 877–8339. Facsimile inquiries may be sent to Mr. Gimont at (202) 401–2044. (Except for the “800” number, these telephone numbers are not toll-free.) Email inquiries may be sent to [disaster\\_recovery@hud.gov](mailto:disaster_recovery@hud.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. 2015 and 2016 Allocations

##### A. Background

Since December 2015, four different public laws have been enacted that have provided CDBG–DR appropriations to address major declared disasters that occurred in 2015, 2016, 2017, and later. Table 1 lists these various public laws, the related **Federal Register** notices that govern the funds, grantees that have received allocations, and amounts provided to those grantees.

**Table 1 – FY 2016 and 2017 CDBG–DR Appropriations and Allocations**

Appropriation Act	Public Law 114-113	Public Law 114-223	Public Law 114-254	Public Law 115-31	
Date of Enactment	December 18, 2015	September 29, 2016	December 10, 2016	May 5, 2017	
Date of Applicable Federal Register Notice	June 17, 2016	November 21, 2016	January 18, 2017		
Federal Register Notice Reference Number	81 FR 39687	81 FR 83254	82 FR 5591		
CDBG–DR Available	\$299,000,000	\$500,000,000	\$1,805,976,000	\$400,000,000	
2015 Disaster Grantees					Totals
Lexington County SC	\$16,332,000			\$5,038,000	\$21,370,000
Columbia SC	\$19,989,000			\$6,166,000	\$26,155,000
Richland County, SC	\$23,516,000			\$7,254,000	\$30,770,000
State of South Carolina	\$96,827,000			\$29,871,000	\$126,698,000
Houston, TX	\$66,560,000			\$20,532,000	\$87,092,000
San Marcos, TX	\$25,080,000			\$8,714,000	\$33,794,000
State of Texas	\$50,696,000			\$23,872,000	\$74,568,000
2016 Disaster Grantees					
State of Louisiana		\$437,800,000	\$1,219,172,000	\$51,435,000	\$1,708,407,000
State of West Virginia		\$17,000,000	\$87,280,000	\$45,595,000	\$149,875,000
State of Texas		\$45,200,000	\$177,064,000	\$16,631,000	\$238,895,000
State of North Carolina			\$198,553,000	\$37,976,000	\$236,529,000
State of South Carolina			\$65,305,000	\$29,781,000	\$95,086,000
State of Florida			\$58,602,000	\$59,335,000	\$117,937,000
Total	\$299,000,000	\$500,000,000	\$1,805,976,000	\$342,200,000	

\*The allocation amounts for Pub. L. 115-3 column include amounts announced by the Department on May 18, 2017.

Each of the public laws identified above provides CDBG–DR funds for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a qualifying major disaster declared by the President pursuant to

the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (Stafford Act) (42 U.S.C. 5121 et seq.).

CDBG–DR grants under each appropriation are governed by one or more **Federal Register** notices that contain the requirements, applicable waivers, and alternative requirements that apply to the use of the funds. Congress requires that HUD publish waivers and alternative requirements in the **Federal Register**.

This **Federal Register** notice sets out the requirements, waivers, and alternative requirements that govern the funds appropriated under Public Law 115–31. Throughout this notice, references to **Federal Register** notices will be to the date the notices were published as noted in Table 1.

Under Public Law 115–31, Congress appropriated \$400 million in CDBG–DR funding to address remaining unmet needs (as defined by HUD) arising from qualifying major disasters that occurred



in 2015 and 2016, and for qualifying major disasters that occur in 2017 or later, until the funds are fully allocated. Congress required that HUD, in distributing the \$400 million, use the allocation methodologies identified in June 17, 2016, and January 18, 2017, **Federal Register** notices for disasters occurring in 2015 and 2016, respectively.

Table 1, under the column labeled Public Law 115–31, reflects the allocation of funds appropriated by that act for qualifying disasters in 2015 and 2016 (inclusive of the amounts announced on May 18, 2017). In HUD's June 17, 2016, **Federal Register** notice, HUD described the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying 2015 disasters. Grantees receiving an

allocation of funds under this **Federal Register** notice for qualifying 2015 disasters are subject to the authority and conditions of Public Law 114–113 and the requirements, waivers, and alternative requirements provided in the June 17, 2016, notice.

In HUD's November 21, 2016, and January 18, 2017, **Federal Register** notices, HUD described the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying 2016 disasters. Grantees receiving allocations of funds under these **Federal Register** notices for qualifying 2016 disasters are subject to the authority and conditions of Public Law 114–223 and 114–254 and the requirements, waivers and alternative requirements provided in the November 21, 2016, and January 18, 2017, **Federal Register** notices.

HUD is allocating the funds for the 2015 and 2016 disasters based on updated data HUD received from the Federal Emergency Management Agency (FEMA), and the Small Business Administration (SBA). HUD's allocations match the difference between HUD's 100 percent estimate of the serious unmet needs for repair in most impacted counties after taking into consideration other resources, including insurance, FEMA, SBA and the amounts previously allocated. HUD's methodology for allocation as specified in the June 17, 2016, and January 18, 2017, notices does not include additional funds for resilience activities. Detailed explanations of HUD's allocation methodologies for qualifying disasters from 2015 and 2016, are provided at Appendix A in the June 17, 2016 notice and Appendix A of the January 18, 2017 notice, respectively.

TABLE 2—QUALIFYING 2015 AND 2016 DISASTERS AND “MOST IMPACTED AND DISTRESSED” AREAS

FEMA disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas
<b>2015 Disasters</b>		
4241 .....	Lexington County (Urban County), SC .....	Lexington County Urban County Jurisdiction (\$5,038,000).
4241 .....	Columbia, SC .....	Columbia (\$6,166,000).
4241 .....	Richland County, SC .....	Richland County Urban County Jurisdiction (\$7,254,000).
4241 .....	State of South Carolina .....	Charleston, Dorchester, Florence, Georgetown and Clarendon Counties* (\$23,896,800).
4223, 4245 .....	Houston, TX .....	City of Houston (\$20,532,000).
4223, 4245 .....	San Marcos, TX .....	City of San Marcos (\$8,714,000).
4223, 4245, 4272 .....	State of Texas .....	Harris, Hays, Hidalgo, and Travis Counties (\$12,511,200).
<b>2016 Disasters</b>		
4263, 4277 .....	State of Louisiana .....	East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes (\$41,148,000).
4273 .....	State of West Virginia .....	Kanawha, Greenbrier, Clay, and Nicholas Counties** (\$36,476,000).
4266, 4269, 4272 .....	State of Texas .....	Harris, Newton, Montgomery, Fort Bend, and Brazoria Counties (\$13,304,800).
4285 .....	State of North Carolina .....	Robeson, Cumberland, Edgecombe, and Wayne Counties (\$30,380,800).
4286 .....	State of South Carolina .....	Marion and Horry Counties (\$23,824,800).
4280, 4283 .....	State of Florida .....	St. Johns County (\$47,468,000).

\*Based on data presented by the grantee, HUD has approved the addition of Clarendon County to the 2015 South Carolina “most impacted and distressed” areas.

\*\*Based on data presented by the grantee, HUD has approved the addition of Clay and Nicholas Counties to the 2016 West Virginia “most impacted and distressed” areas.

Use of funds for all grantees is limited to unmet recovery needs from the major disasters identified in Table 2. Table 2 shows the HUD-identified “most impacted and distressed” areas impacted by the identified disasters. At least 80 percent of the total funds provided to each grantee under this notice must address unmet needs within

the HUD-identified “most impacted and distressed” areas, as identified in Table 2. Grantees may spend the remaining 20 percent in the HUD-identified areas or areas the grantee determines to be “most impacted and distressed.”

#### *B. Use of Funds*

Public Law 115–31 requires funds to be used only for specific disaster recovery related purposes. This allocation provides funds to 2015 and 2016 CDBG–DR grantees for authorized disaster recovery efforts. Grantees allocated funds under this notice for 2015 and 2016 disasters must submit a

substantial Action Plan Amendment as outlined below.

### C. Grant Amendment Process

To receive funds allocated by this notice, 2015 and 2016 grantees (listed in Table 1) must submit a substantial Action Plan Amendment to their approved Action Plan and meet the following requirements:

- Grantee must consult with affected citizens, stakeholders, local governments and public housing authorities to determine updates to its needs assessment;
- Grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified within the context of the entire Action Plan. The beginning of every Action Plan Amendment must include a: (1) Section that identifies exactly what content is being added, deleted, or changed; (2) chart or table that clearly illustrates where funds are coming from and where they are moving to; and (3) a revised budget allocation table that reflects the entirety of all funds;
- Grantee must publish a substantial amendment to its previously approved Action Plan for Disaster Recovery prominently (see section VI.A.4.a of the November 21, 2016, notice and section VI.A.3.a of the June 17, 2016, notice) on the grantee's official Web site for no less than 14 calendar days. The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the amendment's contents and provide feedback;
- Grantee must respond to public comment and submit its substantial Action Plan Amendment to HUD no later than 90 days after the effective date of this notice;
- HUD will review the substantial Action Plan Amendment within 45 days from date of receipt and determine whether to approve the Amendment per criteria identified in this notice and all applicable prior notices;
- HUD will send an Action Plan Amendment approval letter, revised grant conditions (may not be applicable to all grantees), and an amended unsigned grant agreement to the grantee. If the substantial Amendment is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Amendment within 45 days of the notification letter;
- Grantee must ensure that the HUD approved substantial Action Plan Amendment (and original Action Plan)

is posted prominently on its official Web Site;

- Grantee must enter the activities from its published Action Plan Amendment into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR Action Plan to HUD within the system;
- Grantee must sign and return the grant agreement to HUD;
- HUD will sign the grant agreement and revise the grantee's line of credit amount;
- Grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58, or adopts another Federal agency's environmental review where incorporated under provisions authorized by reference in Public Law 115–31, and, as applicable, receives a response from HUD or the state that approves the grantee's Request for Release of Funds and certification;
- Grantee must amend its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan Amendment approval.

### D. Applicable Rules, Statutes, Waivers, and Alternative Requirements

Awards under this notice will be subject to the waivers and alternative requirements provided in the notices governing the award of CDBG–DR funds for 2015 and 2016 disasters, as identified in Table 1. These waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements are met. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

### E. Duration of Funding

Public Law 115–31 provides that these funds will remain available until expended. However, consistent with 31 U.S.C. 1555 and OMB Circular A–11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining balance will be made unavailable for obligation or expenditure. Consistent with the June 17, 2016, November 21, 2016, and

January 18, 2017 notices, the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this notice. Grantees must expend 100 percent of their allocation of CDBG–DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

### II. Waivers and Alternative Requirements for CDBG–DR Funds Appropriated by Public Law 114–223, 114–254 and 115–31 (Applicable Only to the State of Louisiana)

This section of the notice provides a waiver for the state of Louisiana, which has received CDBG–DR allocations pursuant to Public Law 114–223, 114–254 and 115–31. The state of Louisiana was allocated \$1,656,972,000 in CDBG–DR funds under Public Law 114–223 and 114–254 and HUD has approved the state's use of these CDBG–DR funds for three main recovery programs: Housing (86 percent), economic development (4 percent), and infrastructure (6 percent). These programs were developed to address the most urgent and significant unmet needs of those areas impacted by the eligible 2016 disasters. This notice allocates \$51,435,000 to Louisiana pursuant to Public Law 115–31, bringing the total amount allocated to the state for 2016 disasters to \$1,708,407,000.

1. *Waiver of the 70 percent overall benefit requirement (State of Louisiana only).* The overall benefit requirement set by the HCDA requires that 70 percent of the aggregate of the grantee's CDBG program's funds be used to support activities benefitting low- and moderate-income persons. It can be difficult for grantees working in disaster recovery to meet the overall benefit test, because disasters do not always affect low- and moderate-income areas and, therefore, this requirement can in some cases limit grantees' ability to assist the most damaged areas.

The November 21, 2016, notice maintained the 70 percent overall benefit requirement for all grantees receiving funds under these public laws, but provided the state of Louisiana and all other grantees with additional flexibility to request a lower overall benefit requirement. Specifically, that notice allows a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative

requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income (LMI) persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

The state of Louisiana submitted a request to establish a lower overall benefit requirement based on the above criteria. In its request, the state contends that out of the 57,600 households that suffered major or severe damage during the flooding in 2016, only 44 percent were low- and moderate-income (LMI) persons. The State's request notes that due to the persistent flooding that occurs in these communities, offering assistance to all households in the areas affected by the storm, and not just LMI households, will help the impacted neighborhoods with critical rebuilding needs.

Accordingly, the state will target its CDBG-DR funds to households with major or severe damage that did not have flood insurance at the time of the storms (36,510 households). The state indicates that 53 percent of those households qualify as LMI, and that 65 percent of the funds for the state's homeowner program will benefit those LMI households. The state also estimates that 100 percent of its housing rental funds will benefit LMI households, and 50 percent of the funds allocated for infrastructure and economic development activities will also meet the LMI national objective. The state designed its program so that those in greatest need are provided with the greatest level of assistance, by covering 100 percent of unmet needs for households earning less than 120 percent of area median income (AMI) and covering 50 percent of unmet needs for households above 120 percent of AMI. This approach prioritizes the unmet needs of LMI households and encourages higher income households to leverage personal or private funds.

To enable the state to undertake the activities it has deemed most critical for its recovery, and to ensure that LMI households are sufficiently served and/or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 55 percent of the state's allocation of CDBG-DR funds. This means that the state must use at least 55 percent of its CDBG-DR

allocations under Public Law 114-223, 114-254 and 115-31 to benefit LMI households (or not less than \$939,623,850.00).

Based on the analysis submitted by the state, the Secretary finds a compelling need for this reduction due to the circumstances outlined in the state's request. In particular, HUD notes that the areas most damaged by the storms have limited LMI populations; that all of the state's recovery programs will have some component that will specifically benefit LMI households; that the persistent nature of flooding has led the state to focus on the importance of rebuilding communities in a holistic manner; and that the state will prioritize the unmet needs of LMI households in its homeowner recovery programs. HUD does not see evidence that reduction to the 50 percent level sought by the state is necessary given its approved program design and early data with respect to its applicant pools. HUD, however, does advise the state to maintain its current program design and targeting strategy to ensure that projected LMI benefit levels are achieved and the state continues to demonstrate that low- and moderate-income persons' disaster-related needs have been sufficiently met.

This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the state of Louisiana must meet when carrying out activities identified in its approved action from 70 percent to not less than 55 percent of the state's allocations of CDBG-DR funds under Public Law 114-223, 114-254 and 115-31.

*2. Waiver of Section 414 of the Stafford Act, 42 U.S.C. 5181 (State of Louisiana only).* The state of Louisiana has requested a waiver of section 414 of the Stafford Act, as amended, for rehabilitation or reconstruction activities. This notice grants the State's request and specifies alternative requirements.

Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA]". Accordingly, tenants displaced from their homes as a result of the identified

disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition, of real property for a federally assisted project or program may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to the CDBG-DR funded rehabilitation and reconstruction activities undertaken by the state of Louisiana, or its subrecipients, for its grants under Public Law 114-223, Public Law 114-254 and Public Law 115-31; provided that the activities were not planned, approved, or otherwise underway prior to the disaster.

The Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. Under the CDBG-DR supplemental appropriations, the Secretary has the authority to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds. The Department, in special cases, has previously granted a waiver and provided alternative requirements of Section 414 to CDBG-DR grantees, including the Gulf States impacted by disasters in 2005 and 2008 (see 72 FR 48804) and the 2011 floods in the city of Minot, North Dakota (see 79 FR 60490).

The severe floods of 2016 damaged Louisiana's affordable rental housing stock. According to the State, approximately 28,470 rental units were damaged by the floods, resulting in lower vacancies, increased rental rates and further exacerbating the housing cost burden among low- and moderate-income renters. Many of the damaged rental housing units have since been vacated by tenants who have found permanent housing elsewhere.

The state of Louisiana's CDBG-DR Action Plan for recovery from the 2016 floods identifies this rental housing need and contains several programs geared toward the repair and increase of the affordable rental housing stock by using CDBG-DR funds to reconstruct or rehabilitate rental units that were damaged by the floods and to create new rental housing by providing funding for multi-family developments.

Existing CDBG–DR funding is only sufficient to bring less than six percent of disaster-impacted rental units into decent, safe, and sanitary condition. With a potential pool of 1,500 units eligible for rehabilitation or reconstruction, a strict interpretation of Section 414 of the Stafford Act and 49 CFR 24.403(d)(1) would pose a significant administrative burden and add delays to achieving overall program goals within the timeframe set forth by the applicable notices governing the use of the CDBG–DR funds. Additionally, the State has demonstrated that replacement housing payments for persons initially displaced by the disaster will reduce funds available for improving long-term housing affordability and sustainability.

The State has identified a relatively small population of households currently in need of continued temporary housing assistance of some form related to the flooding events, and the State's CDBG–DR Action Plan attempts to address this need by funding programs designed to assist the needs of persons who are homeless or at risk of becoming homeless due to the 2016 floods.

The Department's basis for this waiver and alternative requirements are unique to the State of Louisiana as documented in its request to the Department. The Department has considered the State's request and determined that good cause exists for a waiver and alternative requirements and that such waiver and alternative requirements are not inconsistent with the overall purposes of title I of the HCD Act.

1. The State's proposal maximizes its ability to increase the overall supply of affordable rental units. Such units will have affordability requirements for low-income persons.

2. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with a strict interpretation of Stafford Act Section 414 requirements on the potential pool of 1,500 units eligible for rehabilitation or reconstruction.

3. This waiver does not apply to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced by other HUD-funded disaster recovery programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted.

Due to the specific circumstances of Louisiana's recovery process, the Department is providing a waiver of Section 414 of the Stafford Act and its

implementing regulation at 49 CFR 24.403(d)(1), and establishing alternative requirements. For rehabilitation or reconstruction activities in support of bringing damaged rental units back into productive use, the State must adhere to the alternative requirements specified in this notice.

For tenants that have vacated housing units damaged by the 2016 floods, the State of Louisiana must:

1. Establish a publicly available re-housing plan for its rental housing programs that includes, at minimum, the following:

a. A rental registry containing information concerning the availability of all of the units assisted through its rental housing programs so that displaced low- and moderate-income households and other interested households may apply to live in these units;

b. Contact information and a description of any eligibility and applicable application process, including any deadlines;

c. Information on market rate rental units for non-LMI households displaced by the disaster;

d. A description of services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources.

2. Establish and implement operating procedures to ensure that a good faith effort is made to contact each former residential tenants to inform them of the availability of their previous unit and other available units rehabilitated under the program.

3. Offer low- and moderate-income former tenants preferred status in the residential application process for the unit from which they were displaced and for other rental units repaired or created with CDBG–DR funds.

The State's request for waiver and alternative requirements indicates that landlords participating in the rental repair programs will be required to keep the restored units affordable for 5 to 20 years after initial occupancy. The State's policies and procedures governing each rental repair program must detail any imposed affordability requirements for that program.

This waiver has no effect on URA eligibility for relocation assistance and payments for existing tenant occupants of dwelling units who may be displaced or relocated temporarily as a direct result of a CDBG–DR activity.

### III. Allocation Framework for Disasters in 2017 or Later

#### A. Background

After addressing remaining unmet need for 2015 and 2016 disasters, \$57,800,000 in CDBG–DR funding remains available to be allocated for major disasters occurring in 2017 or later. Public Law 115–31 specifies that the funds allocated for disasters in 2017 or later are subject to the same authority and conditions as those applicable to CDBG–DR funds appropriated by Public Law 114–223 and, therefore, these funds are also subject to the requirements of the November 21, 2016 notice, except the major disaster may occur in calendar year 2017 or later until such funds are fully allocated.

For 2017 and later disasters, HUD will use the methodology specified in Appendix A to the January 18, 2017 notice for determining if a disaster meets the minimum qualifications for funding using the limits established by that notice. For disasters that meet the minimum qualification, HUD will allocate the lesser of 100 percent of serious unmet needs as defined in the January 18, 2017 notice or remaining funds available from Public Law 115–31.

HUD will not evaluate a disaster for qualification to receive CDBG–DR funds until:

(i) The major disaster has been declared eligible for FEMA's Public Assistance (PA) Program and Individual and Households (IHP) Program;

(ii) FEMA has approved Individual Assistance applications totaling at least \$13 million in IHP financial assistance for the declared disaster in a single county; and

(iii) four months have passed since the disaster declaration that made IHP available, or the IHP registration period is closed, whichever comes first.

These criteria do not assure CDBG–DR eligibility, but they will lead HUD to acquire the data necessary to determine eligibility, and if eligible, calculate a formula allocation. HUD will allocate funds to 2017 disasters using the best available data at that time.

#### B. Use of Funds

Grantees receiving an allocation of funds for 2017 and later disasters pursuant to a subsequent notice are subject to the requirements of the November 21, 2016 notice, as amended, which require that prior to the obligation of CDBG–DR funds, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address

long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. This Action Plan for disaster recovery must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (HCDA) or allowed by a waiver or alternative requirement; and (2) respond to disaster-related impact to infrastructure, housing, and economic revitalization in the most impacted and distressed areas. To inform the plan, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI of the November 21, 2016 notice, as amended.

Pursuant to the November 21, 2016 notice, each grantee receiving an allocation of funds for 2017 or later disasters in a subsequent notice is also required to expend 100 percent of its allocation of CDBG–DR funds on eligible activities within 6 years of HUD’s execution of the grant agreement.

Grantees receiving an allocation of funds for 2017 or later disasters pursuant to a subsequent notice will be subject to the grant process provided for in section V of the November 21, 2016 notice.

#### IV. Public Law 113–2 Waivers and Alternative Requirements

##### A. Background

This section of the notice authorizes waivers and alternative requirements for certain grantees that received an allocation of funds appropriated under Public Law 113–2, which ultimately made available \$15.2 billion in CDBG–DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The full amount of the appropriation has been allocated as follows: \$13 billion in response to Hurricane Sandy, \$514 million in response to disasters occurring in 2011 or 2012, \$655 million in response to 2013 disasters, and \$1 billion for the National Disaster Resilience Competition (NDRC).

This section of the notice specifies waivers and alternative requirements and modifies requirements for grantees that received awards under the NDRC (CDBG–NDR grantees), described in the **Federal Register** notice published by the Department on June 7, 2016 (81 FR 36557). The requirements of the June 7,

2016 notice continue to apply to these grantees, except as modified by this notice.<sup>1</sup>

This section of the notice also provides a waiver of the low- and moderate-income overall benefit requirement for the City of Moore, OK, and the State of New York, which have each received a CDBG–DR award pursuant to Public Law 113–2. This section of the notice also modifies the process for the publication of the expenditure extensions approved by the Department under Public Law 113–2. This section of the notice additionally authorizes grantees receiving an allocation of CDBG–DR funds for Rebuild by Design projects to exclude expenditures of that allocation from the calculation of the grantee’s overall low- and moderate-income benefit.

##### B. Applicable Rules, Statutes, Waivers, and Alternative Requirements

Public Law 113–2 authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD’s obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waivers and alternative requirements described in this section of notice, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purposes of title I of the HCDA. Grantees under Public Law 113–2 may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of Public Law 113–2, waivers must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

1. *Urgent need national objective certification requirements for CDBG–NDR grantees.* The June 7, 2016 notice provided CDBG–NDR grantees with a waiver and alternative requirement to

the certification requirements for the documentation of the urgent need national objective at 24 CFR 570.208(c) and 570.483(d), waiving the certification requirements until 24 months after the date the Department obligates funds to a grantee, and alternatively requiring each CDBG–NDR grantee to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. Elsewhere, this notice describes the extension of the expenditure deadline that the Department is authorized to provide to all CDBG–NDR grantees, allowing them to expend funds until September 30, 2022. For CDBG–NDR grantees funding activities that will satisfy the urgent need national objective, an extension of the existing alternative requirement to the standard urgent need certification requirement is also required, to ensure that the CDBG–NDR project can meet the urgent need national objective on a timeframe that coincides with an extended expenditure deadline.

Each CDBG–NDR grantee was required to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact. For activities that meet the urgent need national objective, grantees were required to reference in their Action Plan the type, scale, and location of the disaster-related impacts that each project, program, and/or activity will address. Without an extension of the prior waiver and alternative requirement to the certification requirements for documentation of the urgent need national objective, HUD’s extension of the 24-month expenditure deadline could penalize grantees whose successful applications relied on the availability of the alternative urgent need national objective criteria.

Grantees documented urgent needs in their initial applications, and the grantees will expend funds to meet these urgent needs throughout the grant period. Therefore, section 3.V.A.1.d. of the June 7, 2016 notice is modified to add the following alternative requirement for CDBG–NDR grantees: “Notwithstanding the two year limitation on the use of the urgent need national objective referenced in paragraph one of this section, for activities designed to respond to disaster-related impacts that pose a serious and immediate threat to the health or welfare of the community, and which were adequately documented within the grantee’s initial Action Plan, the grantee may continue to use the alternative certification of the urgent

<sup>1</sup> Links to the June 7, 2016 notice, the text of Public Law 113–2, and additional guidance prepared by the Department for CDBG–DR grants, are available on the HUD Exchange Web site: <https://www.hudexchange.info/programs/cdbg-dr/resilient-recovery/>.

need national objective until the end of the extended expenditure deadline approved by the Department, provided that the grantee updates the needs assessment of its Action Plan as new or more detailed/accurate disaster-related impacts are known.”

As a reminder, Action Plans must be amended, as necessary, to ensure that an updated needs assessment is included for each project, program, or CDBG-eligible activity undertaken with CDBG-NDR funds. This alternative requirement does not contemplate new projects or activities that were not documented as meeting an urgent need within a grantee’s initial Action Plan. Amendments to a CDBG-NDR Action Plan that describe additional projects or activities will trigger the substantial amendment requirements described in paragraph V.A.1.g.(i) in the June 7, 2016 notice and new projects or activities intended to meet the urgent need national objective may require a separate waiver from HUD to permit use of the alternative urgent need certification.

**2. Revision of substantial amendment requirements for CDBG-NDR grantees.** The June 7, 2016 notice specified the changes to an Action Plan that would constitute a substantial amendment, and described the process required for CDBG-NDR grantees to make a substantial amendment to an approved Action Plan. The June 7, 2016 notice indicated that HUD would review the proposed change(s) against the rating factors and threshold criteria and consider whether the revised Action Plan, inclusive of the proposed change, would continue to score in the fundable range for the NDRC. The June 7, 2016 notice also stated that HUD would only approve a substantial amendment if the revised score remains within the fundable range of CDBG-NDR scores. However, all NDR awards funded scaled and scoped versions of proposals in NDR applications, because the Department could not fully fund all the proposed activities described in applications that scored within the initial fundable range. Accordingly, determining whether a change to a grantee’s Action Plan would fall within the initial fundable range of CDBG-NDR scores is not an accurate method of determining whether a revised project would still be fundable. To address this and to further clarify the criteria and process for amendments to CDBG-NDR Action Plans, the Department is amending the third paragraph of section 3.I.B. of the June 7, 2016 notice by replacing it in its entirety with the following:

“A grantee may amend the Action Plan, but must receive prior HUD approval for substantial amendments to the plan. Before making any substantial amendment to the Action Plan, a grantee must follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application, FR-5800-N-29A2 (NOFA). Additional information about citizen participation requirements can be found in section 3.V.A.3 below.”

Additionally, the Department is also amending section 3.V.A.1. of the June 7, 2016 notice by replacing it with the following:

**“1. Application for CDBG-NDR Waiver and Alternative Requirement.** The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), and 24 CFR 91.220 and 91.320 are waived for funds provided under the NOFA. Instead, HUD required each grantee to submit an application for CDBG-NDR, and the Applicant’s Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under Public Law 113–2. HUD notes that 24 CFR 570.304 and 24 CFR 570.485, to the extent they govern annual formula CDBG grant approvals, do not apply to National Disaster Resilience Competition (NDRC) allocations, but the standard of review of certifications continues to apply to grantee certifications. HUD will monitor the grantee’s activities and use of funds for consistency with its approved Action Plan and all other requirements, including performance and timeliness. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove a substantial amendment to an Action Plan (application) if it is determined that the amended application does not satisfy all the required elements included in this notice at 3.V.A.1.g.(i). However, in reviewing substantial amendments, HUD will not penalize grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process.”

The Appropriations Act, as used in the June 7, 2016 notice, refers to Public Law 113–2.

Additionally, the Department is also amending section 3.V.A.1.g. of the June 7, 2016 notice by replacing it in its entirety with the following:

**“(g) Action Plan Amendments, Submission to HUD, Treatment of Leverage, Partners, and BCA.** A grantee is encouraged to work with its HUD representative before making any amendments to its Action Plan to

determine whether the amendment would constitute a substantial amendment and to ensure that the proposed change complies with all applicable requirements.

(i) **Substantial Amendments.** The following modifications constitute a substantial amendment requiring HUD approval: Any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD’s scaling and scoping of the award), would present a significant change to the grantee’s capacity to carry out the grant (including loss of a partner without addressing lost capacity through replacement or contingency plan identified in the application); any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD’s scaling and scoping of the award), would undermine the grantee’s soundness of approach (including the benefit cost analysis); any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA); any change in program benefit, beneficiaries, or eligibility criteria, and the allocation or reallocation of more than 10 percent of the grant award; any change to the leverage that was pledged and approved in the grantee’s grant agreement; or the addition or deletion of an eligible activity.

Amendments that do not fall within the definition of substantial amendment are referred to as ‘nonsubstantial amendments.’ A grantee must notify HUD at least 10 business days before a nonsubstantial amendment becomes effective.

For substantial amendments, grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. In addition to reviewing Action Plans against the criteria at 24 CFR 91.500, HUD will review and approve a substantial amendment to an Action Plan if the amendment results in an Action Plan that HUD determines: (i) Can be reasonably carried out by the grantee and that the grantee has addressed any loss in capacity due to dissolved partners that are not replaced; (ii) may differ from the previously approved Action Plan but does not significantly deviate from the scope and objectives of the previously approved Action Plan or the purpose of the NDRC; (iii) satisfies all of the required elements identified in the NOFA (as adjusted for HUD’s scaling and scoping of the

award), this amended section 3.V.A.1.g. and elsewhere in the June 7, 2016 notice, including Tie-back requirements, and does not fund activities identified in section III.C.2. of the NOFA as ineligible; (iv) demonstrates (through an updated BCA, if requested) that the benefits to the grantee's community and to the United States continue to justify the costs of the award; and (v) does not differ in the amount of leverage identified in the grantee's grant agreement (substitution of leverage sources is permitted).

To allow HUD to make this determination, a grantee must submit adequate documentation that demonstrates the following: capacity of the grantee and partners to implement the funded activities, any changes to partners who will assist in the amended activity, scope and beneficiaries of the funded activities, the direct and supporting leverage committed by the grantee, and an updated BCA (if requested). Grantees are encouraged to work with their HUD representatives before making any amendment to an Action Plan. As indicated in the NOFA, if a grantee makes or proposes to make a substantial amendment to its project, HUD reserves the right to disapprove the amendment or amend the grantee's award and reduce the grant amount or recapture the grant, as necessary.

(ii) *Information for Substantial and Nonsubstantial Amendments.* If the grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the approved Action Plan and be submitted to HUD. All amendments must comply with provisions of this notice, including Tie-back requirements. Grantees may not amend an Action Plan to include funding for ineligible activities identified in section III.C.2 of the NOFA. The beginning of every proposed amendment must include a section that identifies exactly what content is being added, deleted, or changed, and whether the grantee believes that the proposed amendment would result in a significant change to the grantee's capacity or soundness of approach. This section must also include a chart or table that clearly illustrates where funds are coming from and to where they are moving. The amendment must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its approved NDR application and its DRGR Action Plan must be accessible for viewing as a single document, at any given point in time, rather than requiring the public or HUD to view and cross-reference changes

among multiple amendments.

Requirements for the full expenditure of CDBG–NDR funds by a date established by HUD will continue to be enforced under any amendment to the Action Plan. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of a proposed amendment via email or letter within 5 business days of receipt. HUD may seek additional information from the grantee to determine whether a proposed amendment is a substantial amendment.

(iii) *Amendments that may affect the BCA previously accepted by HUD.* If requested by HUD, a grantee must submit an update to its BCA to support a request for a substantial amendment.

(iv) *Leverage Accepted by HUD.* Grantees are required to show, through quarterly reports, evidence that firmly committed leverage resources in the amount required by the grant terms and conditions have been received and used for the intended purposes. A grantee may not propose an amendment to reduce the amount of leverage pledged and identified in the grant agreement. Sources of leverage funds, however, may be substituted after grant award with HUD approval, if the dollar amount of leverage is equal to or greater than the total amount of leverage required by the grant terms and conditions. Substitution of a leverage source in the same amount committed and identified in the grant terms and conditions is a nonsubstantial amendment. Section 3.V.A.2.e describes additional DRGR leverage reporting requirements.

(v) *Partners Accepted by HUD.* The NOFA permitted a grantee to identify a partner in its application that the grantee would be otherwise required by program requirements to competitively procure. A grantee is not required to secure the services of any partner by competitive procurement if the partner is duly documented and identified in the initial approved Action Plan for the CDBG–NDR grant. The Department has granted permission for single source procurement of these partners, pursuant to 2 CFR 200.320(f)(3) (cited in the NOFA as 24 CFR 85.36(d)(4)(i)(C), which has since been superseded by the Uniform Requirements) and advised state grantees that have not adopted the local government procurement requirements in 2 CFR part 200 to review state requirements associated with single source procurement and to follow all applicable procurement requirements. In many cases, this will entail the grantee undertaking a cost

analysis prior to making payments to such a partner, and the grantee will be responsible for ensuring compliance with requirements that all CDBG–NDR costs be necessary and reasonable (for local government grantees, see 2 CFR 200.323, for state governments that have not adopted 2 CFR 200.323, see state procurement requirements applicable to single source procurements). If a partner dissolves the partnership after award and before activities are complete, a grantee should make its best effort to replace the partner with a similarly skilled partner, if the grantee's approved CDBG–NDR application was rated and ranked based on the capacity of the dissolved partner. If the grantee is not able to replace the lost capacity of a partner by following a contingency plan included in its approved CDBG–NDR application, the grantee must complete a substantial amendment to its Action Plan that addresses the lost capacity. If a grantee proposes to add a partner that would otherwise have to be procured as a contractor after the award or if the partner was identified in the approved CDBG–NDR application but was found by HUD to lack sufficient documentation, then that selection of that partner would not be covered by the single-source permission above and would be subject to procurement requirements under 2 CFR part 200 or state law, as applicable. Additionally, as required by Appendix D to the NOFA, the grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with each partner regarding the use of the CDBG–NDR funds, before disbursing any CDBG–NDR funds to the partner. The written agreement must conform with all CDBG–NDR requirements and shall require the partner to comply with all applicable CDBG–NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2), title I of the HCDA (42 U.S.C. 5302 et seq.), the CDBG program regulations at 24 CFR part 570, this amended June 7, 2016 notice, and any other applicable **Federal Register** notices, and commitments made in the grantee's Phase 1 and Phase 2 approved CDBG–NDR applications."

Additionally, the Department is also amending the first paragraph of section 3.V.A.3.a. of the June 7, 2016 notice by replacing it in its entirety with the following:

*a. Publication of the Action Plan, Access to Information, and Substantial Amendments:* At all times, the grantee must maintain a public Web site that contains the latest versions of its Action Plan, including the DRGR Action Plan and the version as



submitted to HUD for the competition and including the following portions: Executive summary; Factor narratives; Eligibility; national objective; overall benefit; and schedule responses, threshold requirements documentation, and all exhibits (A–G) (but of the attachments, only Attachments D and F must be published); and opportunity for public comment, hearing, and substantial amendment criteria. Before the grantee submits a proposed substantial amendment, the grantee must publish the proposed submission, including a section that identifies exactly what content is being added, deleted, or changed, and whether the grantee believes that the proposed amendment would result in a significant change to the grantee's capacity or soundness of approach; a chart or table that clearly illustrates where funds are coming from and to where they are moving; and a revised budget allocation table that reflects the entirety of all funds, as amended.

**3. Projection of Expenditures and Outcomes.** The June 7, 2016 notice specified the time frames for grantees to report and update the projection of expenditures and performance outcomes for CDBG–NDR grants. As grantees have refined and finalized outcomes for each CDBG–NDR grant, the Department has determined that further clarification of the time frames for initially reporting and updating grantee projections of expenditures and outcomes is required. Accordingly, Section 3.II.B(9) of the June 7, 2016 notice is amended by replacing it in its entirety with the following:

(9) *Continuing responsibility related to certification.* After materials necessary to support the Secretary's certification are submitted and the grant agreement is signed, grantees have continuing responsibilities for maintaining the certification. HUD may request an update to the grantee's certification submission each time the grantee submits a substantial Action Plan Amendment, or if HUD has reason to believe the grantee has made material changes to grantee's support for its certifications.

Grantees must submit to the Department for approval an update to the program schedule (projection of expenditures) and milestones (outcomes) included in the approved CDBG–NDR application response to the Phase 2 Factor 3 Soundness of Approach rating factor. The projections must be based on each quarter's expected performance—beginning the quarter that funds are available to the grantee and continuing each quarter until all funds are expended. Each grantee must also include these projected expenditures and outcomes in the initial activity set-up in DRGR. Within 90 days of HUD's approval of the initial DRGR Action Plan, the projections entered into DRGR (as contained in the DRGR Action Plan) must be amended to reflect any subsequent changes, updates, or revision of the projections. Any subsequent changes, updates, or revision of the projections must receive written approval from HUD. Amending Action Plans solely to

accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD's Web site under the headings Office of Community Planning and Development, Disaster Recovery Assistance (<https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>). The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. HUD will make the DRGR Action Plan and performance reports available on the DRGR public Web site (<https://drgr.hud.gov/public/>).

Additionally, following execution of a grant agreement, the DRGR Action Plan that reflects the components funded through the CDBG–NDR grant must be posted on the grantee's Web site.

Additional information on the DRGR reporting system requirements can be found in section 3.V.A.2. below.

Grantees are also required to ensure all agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or the date of completion. In addition, grantees must enter expected completion dates for each activity in the DRGR system. When target dates are not met, grantees are required to explain why in the activity narrative in the system.

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section 3.V.A. of this amended June 7, 2016 notice. The Department will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

In addition to the above changes, HUD is modifying the last paragraph of section 3.IV of the June 7, 2016 notice, by replacing it in its entirety with the following:

- "Grantee amends its published Action Plan (the DRGR Action Plan) to include any updates to its projection of expenditures and outcomes within 90 days of HUD's approval of the initial DRGR Action Plan."

**4. Waiver of Limitation on Planning Costs (State of New Jersey only).** The Department is modifying the alternative requirement in the June 7, 2016 notice which imposes a 20 percent limit on planning and administrative costs, and is imposing an alternative requirement for the state of New Jersey to accommodate activities to be funded under the state's approved CDBG–NDR Action Plan. The June 7, 2016 notice waived section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) for states and provided an alternative requirement that limits CDBG–NDR grantees to using no more than 20 percent of the total grant amount on a combination of

planning and general administrative costs (see paragraph V.A.10.b.(1) of the June 7, 2016 notice). The state submitted a Phase 2 application to HUD for the NDRC on October 27, 2015, describing an array of recovery and resilience activities that included both infrastructure and planning activities. In January 2016, the Department made a CDBG–NDR award of \$15 million to the state for two proposed planning-only projects, a Regional Resiliency Planning (RRP) Grant Program and a best practices toolkit. As part of its RRP Grant Program, the state proposed to invest CDBG–NDR funds in a program evaluation that investigates the efficacy of its grant program and facilitates replication of the program in other communities. Because the entirety of the state's CDBG–NDR award is for the purpose of planning-only activities, HUD is modifying the limitation described in the June 7, 2016 notice for the state of New Jersey only, and imposing the following alternative requirement:

To ensure that the state of New Jersey can devote the full amount of CDBG–NDR grant funds to both of its approved planning-only projects, the Department is waiving section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) to remove the limitation on planning expenses for this grant, thereby permitting the state to expend 100 percent of its CDBG–NDR grant on planning and administration expenses. Additionally, to ensure that the state devotes a minimum amount of its funds to local level planning activities as described in its approved CDBG–NDR Action Plan, the Department is requiring that at least 80 percent of the \$10 million provided for the RRP in the state's Action Plan (\$8 million) be expended on local planning grants.

As a reminder, the state must continue to limit its general administrative costs for the CDBG–NDR grant to 5 percent of its total grant award, as provided in Public Law 113–2 and the June 7, 2016 notice. The state must also adhere to the program funding amounts in the state's grant agreement terms and conditions, as amended.

**5. Waiver of Limitation on Planning Costs (State of Connecticut only).** The Department is modifying the alternative requirement in the June 7, 2016 notice which imposes a 20 percent limit on planning and administrative costs, and is imposing an alternative requirement for the state of Connecticut to accommodate activities to be funded under the state's approved CDBG–NDR Action Plan. The June 7, 2016 notice waived section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) for states and provides an alternative requirement that limits CDBG–NDR grantees to using no more than 20 percent of the total

grant amount on a combination of planning and general administrative costs (see paragraph V.A.10.b.(1) of the June 7, 2016 notice). The state submitted a Phase 2 application to HUD for the NDRC on October 27, 2015, describing an array of recovery and resilience activities that included both infrastructure and planning activities. In January 2016, the Department made a CDBG–NDR award of \$54,277,359 to the state for infrastructure and the following planning activities: Bridgeport South End Design Guidelines (\$330,000), Bridgeport South End District Energy Feasibility (\$350,000), Connecticut Connections Coastal Resilience Plan (\$8,203,323), and the State Agencies Fostering Resilience (SAFR) program (\$3,500,000), which includes both administration and planning expenses.

The sum of planning projects funded under this award is \$12,383,323, or 22.8 percent of the total grant award amount, and the maximum allowable amount that can be used for general administrative expenses is 5 percent of the grant total or \$2,713,868. In order to allow the state to fully fund its selected projects and properly administer its grant award, HUD is modifying the limitation described in the June 7, 2016 notice for the state of Connecticut, and imposing the following alternative requirement:

The Department is waiving section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) to increase the limitation on planning and general administration expenses for this grant to 27.8 percent or \$15,097,191.

As a reminder, the state of Connecticut must continue to limit its general administrative costs for the CDBG–NDR grant to 5 percent of its total grant award, as provided in the Appropriations Act and the June 7, 2016 notice. The state must also adhere to the program funding amounts in the state's grant agreement terms and conditions, as amended. The Appropriations Act referenced in the amended June 7, 2016 notice is Public Law 113–2.

**6. Waiver for Eligible Activity**  
*(Commonwealth of Virginia only).* The Department awarded the Commonwealth of Virginia CDBG–NDR funds to develop a Coastal Resilience Lab and Accelerator Center (the Center) that supports new business initiatives aimed at addressing flood risk. Many of the Center's components, however, are not otherwise CDBG-eligible activities. Accordingly, the Commonwealth requested and the Department is granting a waiver and establishing an alternative requirement to create a CDBG-eligible activity that comprises all the components proposed for the Center.

The Commonwealth's approved Action Plan states that the Center will “serve as the nexus for technological and organizational innovation around community revitalization, water management, resilience measurement,” and will “focus on generating economic growth by assisting entrepreneurs skilled at identifying problems, matching them with potential solutions, working with companies to create product, and moving product quickly to market.” To this end, the Commonwealth will use its CDBG–NDR grant to fund specific components of the project including the design plan for the operations of the Center, training, office space, and capital investment for emerging businesses focused on regional resilience solutions, targeted workforce development and support, public outreach, and sharing best practices.

In rare instances when necessary to achieve recovery goals, HUD has previously granted waivers and alternative requirements to allow a grantee to treat a large complex project as a single eligible activity with multiple components that contribute to long-term recovery. HUD's approval of the Commonwealth's application through the NDRC is intended to support the creation of a new regional industry cluster to serve as a model for other communities that want to support businesses in this field.

HUD has determined that many of the proposed project components in the Commonwealth's application, including the development of a public facility, support for small businesses through training and capital, supporting workforce development, public engagement, and knowledge dissemination are already eligible CDBG activities. Therefore, to streamline implementation of the Center and its programs and allow the Commonwealth to proceed with valuable project components that are not eligible CDBG activities, HUD is waiving section 105(a) (42 U.S.C. 5305(a)) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for the Commonwealth's CDBG–NDR grant, referred to as the Center, comprised of the activities outlined in the Commonwealth's approved Action Plan for its CDBG–NDR grant. However, HUD reminds grantees that the following provision in the June 7, 2016 notice remains in effect: “When CDBG–NDR grantees provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG–NDR funds may not be used to directly assist a privately-owned utility for any purpose”.

**7. Waiver and alternative requirement for low- and moderate-income area benefit activities** *(State of California only).* The Department awarded the State of California CDBG–NDR funds to develop a Community and Watershed Resilience Program in response to the 2013 Rim Fire that was the third largest wildfire in California's history. The program will finance the development of a biomass facility and wood products campus in Tuolumne county as well as a forest and watershed health component focused on forest restoration efforts, rangeland improvements, and biomass removal and thinning throughout the region. The program also includes the establishment of a community resilience center that will offer business incubator and job training services, while also serving as an emergency evacuation center for the broader community.

The state's approved CDBG–NDR application noted that the most impacted and distressed area with remaining unmet disaster recovery needs to be served by the project encompasses the non-entitlement jurisdictions of Tuolumne, Mariposa and Calaveras counties, where 38 percent of the residents are low- and moderate-income (LMI). The state's application indicated that if CDBG–NDR funds were awarded for the program, the state would require a waiver that would permit activities carried out in areas with an LMI percentage of not less than 38 percent to qualify under the low- and moderate-income area benefit national objective.

Subsequent to the award and in response to HUD's scoping and scaling of the project, the state submitted a revised request to the Department, seeking a waiver and alternative requirement that would allow the state to apply exception criteria that recognizes that few, if any communities within the service area have 51 percent or more low- and moderate-income residents, per the requirements of 42 U.S.C. 5305(c)(2)(A), allowing the state to use a 38 percent LMI threshold to qualify activities under the LMI area benefit national objective. In its request, the state contends that the very nature of the initiatives financed with CDBG–NDR funds means that communities beyond the identified service area will also realize benefits, through reduced risks associated with wildfires, improved watersheds and new economic opportunities arising from efforts to commercialize the area's biomass.

Based on the state's request and the fact that the approved project has a combined LMI population that is not

greater than 38 percent of the area, HUD is granting a limited waiver modifying 42 U.S.C. 5305(c)(2)(A)(i), to the extent necessary to permit the state to use a percentage of not less than 38 percent to qualify activities under the low- and moderate-income area benefit national objective.

8. *Waiver of the 50 percent overall benefit requirement (City of Moore, OK only).* The primary objective of the HCDA is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.” 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of the grantee’s CDBG program’s funds be used to support activities benefitting low- and moderate-income persons. This target can be difficult for many CDBG–DR grantees to reach as a disaster impacts entire communities—regardless of income. Further, it may limit grantees’ ability to provide assistance to the most damaged areas of need. Therefore, as described by the December 16, 2013 **Federal Register** notice (78 FR 76154), the city of Moore, Oklahoma, in addition to the other grantees under Public Law 113–2 received a waiver and alternative requirement reducing the amount of the city’s CDBG–DR funds that must be used for activities that benefit LMI persons to 50 percent. Additional flexibility was provided in the March 5, 2013 **Federal Register** notice (78 FR 14329). It allowed a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee’s long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. Upon HUD’s review of the justification, the request can be granted only if the Secretary finds a compelling need to reduce the overall benefit below 50 percent.

In response to the above, the city of Moore submitted a justification addressing the required criteria. The EF–5 tornado that struck Moore in 2013

also destroyed several affordable housing developments in the city which have not been replaced. The city council adopted a plan in March of 2013 that included infrastructure projects in support of a new affordable housing development project that will bring much needed LMI affordable units to the city. In order to carry out these activities the city acquired land in a closed mobile home park which will allow it to replace a portion of the LMI affordable rental housing destroyed by the EF–5 tornado. Demolition of the remaining structures and asbestos abatement has been completed and a Planned Unit Development (PUD) design for the site has been adopted. The SW 17th/Janeway Master Redevelopment plan will be a mixed use, mixed income urban village which will be built at an overall cost of \$36–\$40 million. This redevelopment will include the use of \$13.5 million in CDBG–DR grant funds and provides for 170 affordable LMI units and 30 market rate units. The city council approved the master plan and PUD in October 2016, and staff are currently developing a Request for Proposals to solicit development bids. After the completion of the SW 17th/Janeway development, the city expects that the percent of LMI residents in the block group which contains the development will rise to 57.2 percent, well above the 51 percent required to classify a project under the low/mod area benefit (LMA) national objective.

Through its Infrastructure Recovery and Implementation Plan (IRIP), designed in 2014, the city identified several flood control and drainage projects that will support the development of SW 17th/Janeway and its affordable housing units, and thus will directly benefit the LMI residents that return to the area. Currently, there are three infrastructure projects associated with the Round Rock development that will not meet the area benefit test that requires at least 51 percent of the residents in the area are LMI using the most current HUD FY 2016 data. The three projects include the Little River Sewer Interceptor project, the S. Telephone Road Improvements project, and the Little River Channel and Greenway project totaling over \$7.6 million in CDBG–DR investments. While these projects will directly benefit the new housing development, they will also benefit other block groups within the city. Without this waiver, the city could carry out these activities under the national objective of Urgent Need, but because of the large number of CDBG–DR funds

dedicated to these activities, the city would then not be able to meet its 50 percent LMI overall benefit requirement. Hence, the city cannot carry out these infrastructure activities without a waiver.

To enable the city to undertake these infrastructure activities it has deemed most critical for its recovery, and to ensure that LMI residents are adequately served and/or assisted, HUD is granting a limited waiver and alternative requirement to reduce the overall benefit from 50 percent to not less than 42 percent. Based on the city’s justification, the Secretary has found a compelling need for this reduction due to the circumstances outlined in Moore’s request. In particular, HUD notes that these projects will all directly serve the new housing development that will provide 170 units of affordable LMI housing, prioritizing the needs of those LMI residents because these three projects will ensure that the redevelopment site is no longer in a FEMA floodway, will repair and replace sewage lines that will service the development, and install traffic control lights and widen an intersection to handle the increased density the development will bring. The city has identified these infrastructure projects as a top priority to ensure the success of the SW 17th/Janeway redevelopment and this waiver will allow LMI persons to live there safely. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the city must meet when carrying out activities with funds appropriated under Public Law 113–2 from 50 percent to not less than 42 percent.

9. *Waiver of the 50 percent overall benefit requirement (New York State, only).* As described in the March 5, 2013 notice, the state of New York and all other grantees under Public Law 113–2 received a waiver and alternative requirement requiring that at least 50 percent of CDBG–DR grant funds must be used for activities that benefit low- and moderate-income persons.

The state of New York has submitted a justification to HUD to reduce the overall benefit requirement for funds provided under Public Law 113–2. HUD has allocated \$4,416,882,000 in CDBG–DR funds to the state pursuant to Public Law 113–2, including \$185 million for projects identified by HUD through the Rebuild by Design competition. The state’s CDBG–DR grant is administered by the Governor’s Office of Storm Recovery (GOSR).

GOSR's approved action plan allocates its CDBG-DR grant to four main recovery programs: Housing (58 percent), economic development (3 percent), community reconstruction (18 percent) and infrastructure (21 percent). These programs were developed by GOSR to address the most urgent and significant unmet needs of those areas impacted by the storms that are eligible under Public Law 113-2—Hurricanes Sandy and Irene. In its request, GOSR contends that it has engaged in extensive and continued outreach to all persons and businesses impacted by the storms to inform the state's citizens of the availability of recovery programs and how to apply, and that all eligible applicants will receive assistance. Significantly, GOSR's analysis of the geographic areas most impacted by the storms demonstrates that the storms did not damage areas with significant LMI populations. Because HUD requires grantees receiving funds under Public Law 113-2 to spend at least 80 percent of each grant in the HUD identified most impacted counties, it is very difficult for the state to meet both this requirement and the requirement that at least 50 percent of the expended funds benefit LMI populations.

GOSR has submitted an extensive data analysis to illustrate that the demographics of the communities most impacted by the storms are generally not comprised of LMI block groups. GOSR's data illustrates that, outside of the five counties that comprise New York City, the storms impacted communities in which only about 20 percent of the population resides in LMI block groups. GOSR has reported that while there are 3.96 million people living in the state's most impacted counties (Nassau, Westchester, Suffolk, and Rockland), only 34 percent of those residents are LMI persons and only 25 percent of the block groups are considered LMI.

The state uses this data to illustrate its difficulty in meeting the LMI area benefit national objective, particularly as it relates to infrastructure. Many of the state's infrastructure projects are large in scale and have widespread positive impacts for persons of all income levels, including LMI persons, but it is nearly impossible for those projects to meet the LMI area benefit criteria. For example, one of the state's largest investments, the \$101 million Bay Park Wastewater Treatment Plant project, benefits a service area that includes more than 370 block groups. Even though this project benefits many thousands of LMI residents within these block groups (approximately 135,000 LMI persons), there are not enough LMI

persons to meet the 51 percent test for an LMI area benefit activity.

Given these challenges, the state has proposed allocating additional funds to initiatives that further address unmet needs of LMI persons, including the reallocation of \$50,000,000 of Community Reconstruction (CR) funds to projects within the city of New York that will meet the applicable LMI area benefit criteria.

To enable the state to undertake the activities it has deemed most critical for its recovery, and to ensure that LMI households are adequately served and/or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement for the state's grant from 50 percent to not less than 35 percent of the state's allocation of CDBG-DR funds, excluding the \$185 million allocated by HUD for Rebuild by Design projects and, consistent with existing program requirements and subject to the requirements in paragraph 10, below. This means that the state must use at least 35 percent of its CDBG-DR allocation (excluding RBD) under Public Law 113-2 to benefit LMI persons.

Based on the analysis submitted by the state, the Secretary has found a compelling need for this reduction due to the particular circumstances outlined in the state's request. In particular, HUD notes that the areas most damaged by the storms have limited LMI populations; that the infrastructure projects being undertaken by the state will nonetheless directly serve large populations of LMI persons; that the state has done significant outreach to communities in the most impacted counties and will serve all eligible applicants that have applied for assistance; and that the state will reallocate at least \$50,000,000 of Community Reconstruction funds to increase the number of LMI persons served. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the state must meet when carrying out activities identified in its approved action with funds appropriated under Public Law 113-2 from 50 percent to not less than 35 percent.

**10. Rebuild By Design Exception to Overall Benefit Requirement.** In the October 16, 2014, **Federal Register** notice (79 FR 62182), HUD allocated \$930,000,000 of CDBG-DR funds made available under Public Law 113-2, for the implementation of six proposals selected through the HUD-sponsored

Rebuild by Design (RBD) competition. The RBD allocation was included as part of the larger allocation of CDBG-DR funds under Public Law 113-2 for long term recovery from Hurricane Sandy. Four grantees received an RBD allocation as part of their CDBG-DR grant for Hurricane Sandy recovery: The state of New York, the city of New York, the state of Connecticut, and the state of New Jersey.

The proposals selected through the Rebuild by Design Competition were identified prior to the development and approval of action plans for grantees receiving an allocation of CDBG-DR funds under Public Law 113-2. The October 16, 2014, notice notes that the individual proposals were selected to address the structural and environmental vulnerabilities that Hurricane Sandy exposed in communities throughout the region and to provide fundable solutions to better protect residents from future disasters. The notice also requires that projects funded with the RBD allocation reflect the proposals selected through the Rebuild by Design Competition to the greatest extent practicable and appropriate.

The RBD proposals were selected by HUD and the RBD allocation was included as part of each grantee's overall CDBG-DR allocation for Hurricane Sandy recovery, however, HUD recognizes that as the location and scope of an RBD project is further refined, the RBD portion of a grantee's overall CDBG-DR allocation may prevent certain grantees from meeting the requirement of the March 5, 2013, notice that at least 50 percent of each grantee's overall allocation of CDBG-DR funds be expended to meet the LMI national objective. Accordingly, the Secretary has found a compelling need for this waiver based on the facts presented above. In particular, HUD's selection of RBD projects within defined geographic areas may limit the ability of grantees to meet an LMI national objective within that defined area. This is a limited waiver and alternative requirement to modify 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to allow the four grantees receiving an allocation of CDBG-DR funds specifically for RBD projects, to either include or exclude the expenditure of its RBD allocation in the calculation of the grant's overall LMI benefit. If a grantee chooses to exclude the expenditures of its RBD allocation from its overall benefit calculation, it is required to notify HUD and the public through a non-substantial amendment to its approved action plan.

### 11. *Publication of Approved Expenditure Extension Requests.*

Pursuant to the requirements of section 904(c) under title IX of Public Law 113–2, CDBG–DR and CDBG–NDR funds must be expended within 24 months following obligation, unless an extension is provided. The Office of Management and Budget (OMB) granted the Department a waiver of the statute's two-year expenditure timeline, recognizing that certain disaster recovery activities satisfy the OMB criteria for activities that are long-term by design where it is impracticable to expend funds within the 24-month period and achieve program missions. HUD may grant extensions for activities that satisfy the OMB criteria. The **Federal Register** notice published by the Department on May 11, 2015 (80 FR 26942) and the June 7, 2016 notice established the process and requirements for extension of the deadline for the expenditure of funds under Public Law 113–2, including the requirement that HUD publish its approval of the extension of grantee expenditure deadlines in the **Federal Register**. In order to provide the public with more timely information about the expenditure deadlines for funds provided under Public Law 113–2, the Department is amending both the May 11, 2015 notice and the June 7, 2016 notice, respectively, to provide for the publication of expenditure deadline extensions on the Department's Web site.

Accordingly, the last bullet of Section VI of the May 11, 2015 notice is amended to read:

- “If approved, HUD will publish the extension approval on its web site at: <https://www.hudexchange.info/programs/cdbg-dr/>. HUD will consolidate grantee extension approvals for publication. Therefore, extension approval is effective as of the date of the extension approval letter, rather than as of the date the approval is published on the HUD web site.”

The first paragraph Section II.A.2 of the June 7, 2016 notice is also amended to read:

“For any portion of funds that the grantee believes will not be expended by the deadline and that it desires to retain, the NOFA required the Grantee to submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of the funds. Appendix E of the NOFA also required Applicants to submit extension requests with the application if the Applicant submitted a schedule that indicated time needed for completion of the proposal exceeds 24 months. Some Applicants submitted extension requests to HUD within their

applications and such extensions were considered within the application review process. If granted, any extensions will be published on the HUD web site at: <https://www.hudexchange.info/programs/cdbg-dr/>. Under the NOFA, grantees that did not submit an extension request with their Applications are eligible to request an extension prior to the expiration of the twenty-four month deadline for the expenditure of obligated funds. As required by Appendix E of the NOFA, the extension request must justify the need for the extension, detail the compelling legal, policy or operational challenges necessitating the extension, and identify the date when funds covered by the extension will be expended. The Grantee must justify how, under the proposed schedule, the Project will proceed in a timely manner. For example, large and complex infrastructure Projects are likely to require more than 24 months to complete. An extension request for such a Project should justify the new timeline for any proposed extension by comparing it to completion deadlines for other similarly sized Projects.”

### V. New LMI National Objective Criteria for Buyouts and Housing Incentives (Applicable to Multiple Appropriations)

Historically, various **Federal Register** notices published by HUD have authorized CDBG–DR grantees to carry out “buyouts,” which have been generally limited to the acquisition of properties located in a floodway or floodplain or Disaster Risk Reduction Area for pre- or post-flood value for the purpose of reducing risk from future disasters. These notices also generally prohibit redevelopment of property acquired through buyouts. Certain previous CDBG–DR **Federal Register** notices also waive 42 U.S.C. 5305(a) and associated regulations to allow grantees to offer housing incentives to resettle beneficiaries who were in disaster-affected communities. As described in those notices, housing incentives are usually offered to encourage households to relocate to a suitable housing development or to an area promoted by the community's comprehensive recovery plan, and may be in addition to acquisition or buyout awards.

In this notice, HUD is establishing an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives as described above, must continue to comply with the other eligibility requirements of applicable **Federal Register** notices

governing those incentives—specifically, the requirement that grantees “providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. In addition, the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.”

The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet a LMI housing (LMH) national objective (80 FR 72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG–DR grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG–DR assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCDA to assist low- and moderate income persons, the Secretary has determined that there is good cause to establish an alternative requirement under which CDBG–DR grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs, due to the benefits received by the individuals that receive buyout and housing incentive awards that allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)–(4) and 570.483(b)(1)–(4), HUD is establishing an alternative requirement to include two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG–DR funding provided by Public Law 113–2, 114–113, 114–223, 114–254 and 115–31.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

- (1) The CDBG–DR funds have been provided for an eligible buyout activity that benefits LMI households by

supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR funds:

(a) Low/Mod Buyout (LMB). When CDBG-DR funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount is greater than the pre-disaster fair market value of that property;

(b) Low/Mod Housing Incentive (LMHI). When CDBG-DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary.

Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-DR grantee's overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b).

Grantees receiving an allocation of CDBG-DR funds pursuant to the following appropriations acts must specifically request a waiver and alternative requirement from HUD in order apply the new national objective criteria established in this section of the notice: Public Law 109-148, 109-234, and 110-116 (Katrina, Rita, and Wilma); Public Law 110-252 and 110-328 (2008 Disasters), Public Law 111-112 (2010 disasters), and Public Law 112-55 (2011 disasters).

## VI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228; and 14.269.

## VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: July 31, 2017.

Janet Golrick,

Acting Deputy Secretary.

[FR Doc. 2017-16411 Filed 8-4-17; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2017-0037; FXIA16710900000-156-FF09A30000]

### Foreign Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA).

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358-2281. To locate the **Federal Register** notice that announced our receipt of the application for each permit listed in this document, go to [www.regulations.gov](http://www.regulations.gov) and search on the permit number provided in the tables in **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Joyce Russell, (703) 358-2023 (telephone); (703) 358-2281 (fax); or [DMAFR@fws.gov](mailto:DMAFR@fws.gov) (email).

**SUPPLEMENTARY INFORMATION:** On the dates below, as authorized by the provisions of the ESA, as amended (16 U.S.C. 1531 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

## ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application <b>Federal Register</b> notice	Permit issuance date
12500C .....	Charles Waibel .....	82 FR 4914 January 17, 2017 .....	4/13/2017
06382C .....	Richard Killion .....	82 FR 4914 January 17, 2017 .....	4/13/2017
15671C .....	New Mexico State University/Timothy F. Wright .....	82 FR 4914 January 17, 2017 .....	3/27/2017
93065B .....	University of South Carolina .....	81 FR 63788 September 16, 2016 .....	1/12/2017
209142 .....	Adalgisa Caccone .....	82 FR 14742 March 22, 2017 .....	4/25/2017
13615C .....	Stevens Forest Ranch .....	82 FR 13486 March 13, 2017 .....	05/01/17

**Authority:** We issue this notice under the authority of the ESA, as amended (16 U.S.C. 1531 *et seq.*).

**Joyce Russell,**

*Government Information Specialist, Branch of Permits, Division of Management Authority.*

[FR Doc. 2017-16540 Filed 8-4-17; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

[WBS Number GX17EF00PMEXP00]

#### **Agency Notice of Webinar; Announcement of U.S. Geological Survey (USGS), National Geospatial Program (NGP) 3D Elevation Program (3DEP) FY17 Informational Training Webinars in Preparation for the Upcoming Release of the USGS Broad Agency Announcement (BAA) for 3D Elevation Program (3DEP)**

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Geological Survey is proposing program sponsored informational training webinars to provide scripted training to prospective applicants. This 3D Elevation Program (3DEP) training has been developed to encourage applications from federal agencies, states, tribes and communities across the nation to support the acquisition of high-quality topographic data and a wide range of other three-dimensional representations of the Nation's natural and constructed features.

**DATES:** The USGS BAA for 3DEP FY17 Informational Training Webinars will be held on August 10, 2017, 1:00–2:30 p.m. ET, and August 17, 2017, 3:00–4:30 p.m. ET.

**ADDRESSES:** Informational training webinar information is available at <https://nationalmap.gov/3DEP/FY18BAA.html>.

**FOR FURTHER INFORMATION CONTACT:** For further information about this webinar contact Diane Eldridge by email at [gs\\_baa@usgs.gov](mailto:gs_baa@usgs.gov), or by telephone at (703) 648-4521.

**SUPPLEMENTARY INFORMATION:** The primary goal of 3DEP is to systematically collect enhanced elevation data in the form of high-quality light detection and ranging (lidar) data over the conterminous United States, Hawaii, and the U.S. territories, as well as interferometric synthetic aperture radar (ifsar) data over Alaska. The 3DEP initiative is based on

the results of the National Enhanced Elevation Assessment (NEEA), which indicated an optimal benefit to cost ratio for Quality Level 2 (QL2) data collected over 8-years to complete national coverage. The implementation model for 3DEP is based on multi-agency partnership funding for topographic data acquisition, with the USGS acting in a lead program management role to facilitate planning and acquisition for the broader community, through the use of government contracts and partnership agreements. The annual Broad Agency Announcement (BAA) is a competitive solicitation issued to facilitate the collection of lidar and derived elevation data for the 3D Elevation Program (3DEP). It has been included in the annual Catalog of Domestic Federal Assistance under USGS 15.8 17. Federal agencies, state and local governments, tribes, academic institutions and the private sector are eligible to submit proposals. The 3DEP informational training webinars will introduce this opportunity to the wide array of prospective applicants and provide a summary of the BAA application procedures. Advanced Registration is required. National Webinars will be recorded and made available for viewing.

**Paul Wiese,**

*Acting Deputy Director, National Geospatial Program.*

[FR Doc. 2017-16541 Filed 8-4-17; 8:45 am]

**BILLING CODE 4338-11-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[17X.LLAK930000.L13100000.EI0000.241A]

#### **Call for Nominations and Comments for the National Petroleum Reserve in Alaska Oil and Gas Lease Sale**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) Alaska State Office is issuing a call for nominations and comments on all unleased tracts for the upcoming National Petroleum Reserve—Alaska (NPR-A) Oil and Gas Lease Sale, including tracts currently unavailable for leasing under the 2013 NPR-A Integrated Activity Plan.

**DATES:** BLM Alaska must receive all nominations and comments on these tracts for consideration on or before September 6, 2017.

**ADDRESSES:** Mail nominations and/or comments to: State Director, Bureau of

Land Management, Alaska State Office, 222 West 7th Avenue, Mailstop 13, Anchorage, AK 99513-7504.

#### **FOR FURTHER INFORMATION CONTACT:**

Wayne Svejnoha, BLM Alaska Energy and Minerals Branch Chief, 907-271-4407. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM is issuing this call for nominations and comments on all tracts within the National Petroleum Reserve in Alaska and for tracts available for leasing under the upcoming NPR-A Oil and Gas Lease Sale, pursuant to 43 CFR 3131.2. Before including your address, phone number, email address, or other personal identifying information in your nominations and/or comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A map of the petroleum reserve showing all tracts and areas available for leasing is online at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/alaska>.

To describe the tracts you are nominating for leasing or when providing comments, please use the NPR-A maps, legal descriptions of the tracts, and additional information available through the Web site. The BLM also requests comments on tracts that should receive special consideration or analysis.

**Bud Cribley,**

*State Director, Alaska.*

[FR Doc. 2017-16604 Filed 8-4-17; 8:45 am]

**BILLING CODE 4310-JA-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCO956000 L14400000.BJ0000 17X]

#### **Notice of Filing of Plats of Survey, Colorado**

**AGENCY:** Bureau of Land Management, Interior.



**ACTION:** Notice of official filing.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

**DATES:** Unless there are protests of this action, the plats described in this notice will be filed on September 6, 2017.

**ADDRESSES:** You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215-7093.

**FOR FURTHER INFORMATION CONTACT:** Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239-3856; [rbloom@blm.gov](mailto:rbloom@blm.gov). Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1-800-877-8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The plat and field notes of the dependent resurvey and subdivision of section 8 in Township 50 North, Range 14 West, New Mexico Principal Meridian, Colorado, were accepted on April 24, 2017.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 35 in Township 9 South, Range 76 West, Sixth Principal Meridian, Colorado, was accepted on April 26, 2017.

The plat and field notes of the dependent resurvey and survey in Township 43 North, Range 15 West, New Mexico Principal Meridian, Colorado, were accepted on June 8, 2017.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 17 in Township 3 North, Range 71 West, Sixth Principal Meridian, Colorado, was accepted on June 15, 2017.

The plat and field notes of the dependent resurvey and survey in Township 43 North, Range 16 West, New Mexico Principal Meridian, Colorado, were accepted on July 13, 2017.

The plat and field notes of the dependent resurvey and survey in Township 36 North, Range 15 West,

New Mexico Principal Meridian, Colorado, were accepted on July 25, 2017.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 43 U.S.C. Chap. 3.

**Dale E. Vinton,**

*Acting Chief Cadastral Surveyor.*

[FR Doc. 2017-16555 Filed 8-4-17; 8:45 am]

**BILLING CODE 4310-JB-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1064]

### Certain Shielded Electrical Ribbon Cables and Products Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of 3M Company of St. Paul, Minnesota and 3M Innovative Properties Company of St. Paul, Minnesota. A letter supplementing the complaint was filed on July 12, 2017. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shielded electrical ribbon cables and products containing the same by reason of infringement of certain claims

of U.S. Patent No. 8,933,333 ("the '333 patent"); U.S. Patent No. 9,601,236 ("the '236 patent"); and U.S. Patent No. 9,627,106 ("the '106 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

### FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

### SUPPLEMENTARY INFORMATION:

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on July 31, 2017, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain shielded electrical ribbon cables and products containing the same by reason of infringement of one or more of claim 5 of the '333 patent; claims 1-3 of the '236

patent; and claims 1–3, 6, and 7 of the '106 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

3M Company, 3M Center, St. Paul, MN 55133.

3M Innovative Properties Company, 3M Center, St. Paul, MN 55133.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Amphenol Corporation, 358 Hall Avenue, Wallingford, CT 06492.

Amphenol Interconnect Products Corporation, 20 Valley Street, Endicott, NY 13760.

Amphenol Cables on Demand Corporation, 20 Valley Street, Endicott, NY 13760.

Amphenol Assemble Technology (Xiamen) Co., Ltd., No. 39–B Qian Pu Industrial Park, Xiamen, Fujian 361009, China.

Amphenol (Xiamen) High Speed Cable Co., Ltd., 2nd–4th Floor, No. 176 Xinfeng Road, Xiamen Torch Hi-Tech Zone, Xiamen, Fujian 361009, China.

Amphenol East Asia Limited (Taiwan), 5th Floor, No. 361, Fusing 1st Road, Gueishan Township, Taoyuan County 333, Taiwan.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the

Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 1, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–16554 Filed 8–4–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1339 (Final)]

### Steel Concrete Reinforcing Bar From Taiwan; Supplemental Schedule for the Subject Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**DATES:** July 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Amelia Shister (202–205–2047), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** Effective March 2, 2017, the Commission

established a general schedule for the conduct of the final phase of its investigations on steel concrete reinforcing bar from Japan, Taiwan, and Turkey.<sup>1</sup> The Department of Commerce's preliminary determination for imports from Taiwan was published on March 7, 2017.<sup>2</sup> The Department of Commerce's final determination for imports from Taiwan was published on July 27, 2017.<sup>3</sup> The Commission, therefore, is issuing a supplemental schedule for its investigation on imports of steel concrete reinforcing bar from Taiwan.

The Commission's supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce's final determination is August 7, 2017; the staff report in the final phase of this investigation will be placed in the nonpublic record on August 10, 2017; and a public version will be issued thereafter.

Supplemental party comments may address only Commerce's final determination regarding imports from Taiwan. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 1, 2017.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2017–16480 Filed 8–4–17; 8:45 am]

**BILLING CODE 7020–02–P**

<sup>1</sup> *Steel Concrete Reinforcing Bar From Japan, Taiwan, and Turkey; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations*, 82 FR 13854, March 15, 2017.

<sup>2</sup> *Steel Concrete Reinforcing Bar From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 81 FR 12800, March 7, 2017.

<sup>3</sup> *Steel Concrete Reinforcing Bar From Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925, July 27, 2017.

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****[Docket No. DEA-471N]****Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2018****AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Notice with request for comments.

**SUMMARY:** The Drug Enforcement Administration (DEA) proposes to establish the 2018 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

**DATES:** Interested persons may file written comments on this notice in accordance with 21 CFR 1303.11(c) and 1315.11(d). Electronic comments must be submitted, and written comments must be postmarked, on or before September 6, 2017. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in his sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2018 aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. DEA-471N" on all correspondence, including any attachments. The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the Web page

or attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on [Regulations.gov](http://www.regulations.gov). If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (202) 598-6812.

**SUPPLEMENTARY INFORMATION:****Posting of Public Comments**

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential

business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at <http://www.regulations.gov> for easy reference.

**Legal Authority**

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the DEA pursuant to 28 CFR 0.100.

**Analysis for Proposed 2018 Aggregate Production Quotas and Assessment of Annual Needs**

The proposed year 2018 aggregate production quotas and assessment of annual needs represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2018 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

In determining the proposed 2018 aggregate production quotas and assessment of annual needs, the Acting Administrator has taken into account the criteria pursuant to 21 U.S.C. 826(a) and in accordance with 21 CFR 1303.11 (aggregate production quotas for controlled substances) and 21 CFR 1315.11 (assessment of annual needs for ephedrine, pseudoephedrine, and

phenylpropanolamine). The DEA proposes the aggregate production quotas and assessment of annual needs for 2018 by considering: (1) Total net disposal of each class or chemical by all manufacturers and chemical importers during the current and two preceding years; (2) trends in the national rate of net disposal of the class or chemical; (3) total actual (or estimated) inventories of the class or chemical and of all substances manufactured from the class or chemical, and trends in inventory accumulation; (4) projected demand for each class or chemical as indicated by procurement and import quotas requested in accordance with 21 CFR

1303.12, 1315.32, and 1315.34; and (5) other factors affecting medical, scientific, research, and industrial needs of the United States and lawful export requirements, as the Acting Administrator finds relevant. These quotas do not include imports of controlled substances for use in industrial processes.

Other factors the Acting Administrator considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the

proposed 2018 assessment of annual needs, the DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

The Acting Administrator, therefore, proposes to establish the 2018 aggregate production quotas for certain schedule I and II controlled substances and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Proposed 2018 quotas (g)
<b>Schedule I</b>	
1-(1-Phenylcyclohexyl)pyrrolidine .....	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201) .....	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694) .....	30
1-[1-(2-Thienyl)cyclohexyl]piperidine .....	15
1-Benzylpiperazine .....	25
1-Methyl-4-phenyl-4-propionoxypiperidine .....	2
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E) .....	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D) .....	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N) .....	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P) .....	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H) .....	30
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36) .....	25
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C) .....	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82) .....	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I) .....	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5) .....	30
2,5-Dimethoxy-4-ethylamphetamine (DOET) .....	25
2,5-Dimethoxy-4-n-propylthiophenethylamine .....	25
2,5-Dimethoxyamphetamine .....	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2) .....	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4) .....	30
3,4,5-Trimethoxyamphetamine .....	25
3,4-Methylenedioxyamphetamine (MDA) .....	55
3,4-Methylenedioxymethamphetamine (MDMA) .....	50
3,4-Methylenedioxy-N-ethylamphetamine (MDEA) .....	40
3,4-Methylenedioxy-N-methylcathinone (methylene) .....	40
3,4-Methylenedioxypropyrolvalerone (MDPV) .....	35
3-FMC; 3-Fluoro-N-methylcathinone .....	25
3-Methylfentanyl .....	30
3-Methylthiofentanyl .....	30
4-Bromo-2,5-dimethoxyamphetamine (DOB) .....	25
4-Bromo-2,5-dimethoxyphenethylamine (2-CB) .....	25
4-Fluoroisobutyl fentanyl .....	30
4-FMC; Flephedrone .....	25
4-MEC; 4-Methyl-N-ethylcathinone .....	25
4-Methoxyamphetamine .....	150
4-Methyl-2,5-dimethoxyamphetamine (DOM) .....	25
4-Methylaminorex .....	25
4-Methyl-N-methylcathinone (mephedrone) .....	45
4-Methyl- $\alpha$ -pyrrolidinopropiophenone (4-MePPP) .....	25
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol .....	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog) .....	40
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) .....	30
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate) .....	30
5F-APINACA; 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide) .....	30
5-Fluoro-PB-22; 5F-PB-22 .....	20
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1H-indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone) .....	25
5-Methoxy-3,4-methylenedioxyamphetamine .....	25
5-Methoxy-N,N-diisopropyltryptamine .....	25

Basic class	Proposed 2018 quotas
	(g)
5-Methoxy-N,N-dimethyltryptamine .....	25
AB-CHMINACA .....	30
AB-FUBINACA .....	50
AB-PINACA .....	30
ADB-FUBINACA ( <i>N</i> -(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamide) .....	30
Acetyl Fentanyl .....	100
Acetyl- <i>alpha</i> -methylfentanyl .....	30
Acetyldihydrocodeine .....	30
Acetylmethadol .....	2
ADB-PINACA ( <i>N</i> -(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1 <i>H</i> -indazole-3-carboxamide) .....	50
AH-7921 .....	30
Allylprodine .....	2
Alphacetylmethadol .....	2
<i>alpha</i> -Ethyltryptamine .....	25
Alphameprodine .....	2
Alphamethadol .....	2
<i>alpha</i> -Methylfentanyl .....	30
<i>alpha</i> -Methylthiofentanyl .....	30
<i>alpha</i> -Methyltryptamine (AMT) .....	25
<i>alpha</i> -Pyrrolidinobutiophenone ( $\alpha$ -PBP) .....	25
<i>alpha</i> -Pyrrolidinopentiophenone ( $\alpha$ -PVP) .....	25
Aminorex .....	25
APINCA, AKB48 ( <i>N</i> -(1-adamantyl)-1-pentyl-1 <i>H</i> -indazole-3-carboxamide) .....	25
Benzylmorphine .....	30
Betacetylmethadol .....	2
<i>beta</i> -Hydroxy-3-methylfentanyl .....	30
<i>beta</i> -Hydroxyfentanyl .....	30
<i>beta</i> -Hydroxythiofentanyl .....	30
Betameprodine .....	2
Betamethadol .....	4
Betaprodine .....	2
Bufotenine .....	3
Butylone .....	25
Butyryl fentanyl .....	30
Cathinone .....	24
Codeine methylbromide .....	30
Codeine-N-oxide .....	192
Desomorphine .....	25
Diethyltryptamine .....	25
Difenoxin .....	8,225
Dihydromorphine .....	1,000,160
Dimethyltryptamine .....	35
Dipipanone .....	5
Etorphine .....	30
Fenethylamine .....	30
Furanyl fentanyl .....	30
<i>gamma</i> -Hydroxybutyric acid .....	37,130,000
Heroin .....	45
Hydromorphanol .....	40
Hydroxypethidine .....	2
Ibogaine .....	30
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole) .....	35
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) .....	45
JWH-073 (1-Butyl-3-(1-naphthoyl)indole) .....	45
JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole) .....	30
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole) .....	30
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole) .....	35
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole) .....	30
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole) .....	30
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole) .....	30
Lysergic acid diethylamide (LSD) .....	40
MAB-CHMINACA; ADB-CHMINACA ( <i>N</i> -(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1 <i>H</i> -indazole-3-carboxamide) .....	30
MDMB-CHMICA; MMB-CHMINACA (methyl 2-(1-(cyclohexylmethyl)-1 <i>H</i> -indole-3-carboxamido)-3,3-dimethylbutanoate) .....	30
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamido)-3,3-dimethylbutanoate) .....	30
Marihuana .....	443,680
Mecloqualone .....	30
Mescaline .....	25
Methaqualone .....	60
Methcathinone .....	25

Basic class	Proposed 2018 quotas
	(g)
Methyldesorphine .....	5
Methyldihydromorphine .....	2
Morphine methylbromide .....	5
Morphine methylsulfonate .....	5
Morphine-N-oxide .....	150
N,N-Dimethylamphetamine .....	25
Naphyrone .....	25
N-Ethyl-1-phenylcyclohexylamine .....	5
N-Ethylamphetamine .....	24
N-Hydroxy-3,4-methylenedioxyamphetamine .....	24
Noracymethadol .....	2
Norlevorphanol .....	55
Normethadone .....	2
Normorphine .....	40
Para-fluorofentanyl .....	25
Parahexyl .....	5
PB-22; QUPIC .....	20
Pentedrone .....	25
Pentylone .....	25
Phenomorphan .....	2
Pholcodine .....	5
Psilocybin .....	30
Psilocyn .....	50
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole) .....	45
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole) .....	30
Tetrahydrocannabinols .....	384,460
Thiofentanyl .....	25
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone) .....	30
Tilidine .....	25
Trimeperidine .....	2
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone .....	25
U-47700 .....	30

## Schedule II

1-Phenylcyclohexylamine .....	4
1-Piperidinocyclohexanecarbonitrile .....	4
4-Anilino-N-phenethyl-4-piperidine (ANPP) .....	1,342,320
Alfentanil .....	2,538
Alphaprodine .....	2
Amobarbital .....	18,894
Amphetamine (for conversion) .....	11,280,000
Amphetamine (for sale) .....	39,856,000
Carfentanil .....	20
Cocaine .....	92,120
Codeine (for conversion) .....	15,040,000
Codeine (for sale) .....	40,015,800
Dextropropoxyphene .....	35
Dihydrocodeine .....	264,140
Dihydroetorphine .....	2
Diphenoxylate (for conversion) .....	14,100
Diphenoxylate (for sale) .....	770,800
Ecgonine .....	88,134
Ethylmorphine .....	30
Etorphine hydrochloride .....	32
Fentanyl .....	1,342,320
Glutethimide .....	2
Hydrocodone (for conversion) .....	114,680
Hydrocodone (for sale) .....	50,348,280
Hydromorphone .....	4,547,720
Isomethadone .....	30
Levo-alphacetylmethadol (LAAM) .....	5
Levomethorphan .....	30
Levorphanol .....	12,126
Lisdexamfetamine .....	17,869,000
Meperidine .....	2,717,540
Meperidine Intermediate—A .....	5
Meperidine Intermediate—B .....	30
Meperidine Intermediate—C .....	5
Metazocine .....	15
Methadone (for sale) .....	22,278,000

Basic class	Proposed 2018 quotas
	(g)
Methadone Intermediate .....	24,064,000
Methamphetamine .....	1,446,754
[900,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 600,000 grams for methamphetamine mostly for conversion to a schedule III product; and 39,100 grams for methamphetamine (for sale)]	
Methylphenidate .....	60,724,000
Morphine (for conversion) .....	4,089,000
Morphine (for sale) .....	33,958,440
Nabilone .....	17,860
Noroxymorphone (for conversion) .....	14,044,540
Noroxymorphone (for sale) .....	376,000
Opium (powder) .....	84,600
Opium (tincture) .....	564,000
Oripavine .....	24,534,000
Oxycodone (for conversion) .....	2,453,400
Oxycodone (for sale) .....	95,692,000
Oxymorphone (for conversion) .....	20,962,000
Oxymorphone (for sale) .....	3,395,280
Pentobarbital .....	25,850,000
Phenazocine .....	5
Phencyclidine .....	35
Phenmetrazine .....	25
Phenylacetone .....	40
Racemethorphan .....	5
Racemorphan .....	5
Remifentanyl .....	2,820
Secobarbital .....	161,682
Sufentanyl .....	1,880
Tapentadol .....	18,388,280
Thebaine .....	94,000,000
<b>List I Chemicals</b>	
Ephedrine (for conversion) .....	47,000
Ephedrine (for sale) .....	4,136,000
Phenylpropanolamine (for conversion) .....	14,100,000
Phenylpropanolamine (for sale) .....	7,990,000
Pseudoephedrine (for conversion) .....	40
Pseudoephedrine (for sale) .....	169,200,000

The Acting Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2018 aggregate production quotas and assessment of annual needs as needed.

#### Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Acting Administrator will issue and publish in the **Federal Register** a final order establishing the 2018 aggregate production quota for controlled substances in schedules I and II and establishing an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, 21 CFR 1303.11(c) and 1315.11(f).

Dated: July 27, 2017.

**Chuck Rosenberg,**

*Acting Administrator.*

[FR Doc. 2017-16439 Filed 8-4-17; 8:45 am]

**BILLING CODE 4410-09-P**

#### DEPARTMENT OF JUSTICE

[OMB Number 1110-0051]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Final Disposition Report (R-84)

**AGENCY:** Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304-625-5093) or email [glbrovey@ic.fbi.gov](mailto:glbrovey@ic.fbi.gov). Written comments and/or suggestions



can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Final Disposition Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: R-84.

*Sponsoring component:* Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. *Primary:* City, county, state, federal and tribal law enforcement agencies. This collection is needed to report completion of an arrest event. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 330,000

respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 27,500 total annual hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: August 2, 2017.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2017-16613 Filed 8-4-17; 8:45 am]

**BILLING CODE 4410-02-P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

#### Advisory Board; Notice of Meeting

This notice announces a forthcoming meeting of the National Institute of Corrections (NIC) Advisory Board. The meeting will be open to the public.

*Name of the Committee:* NIC Advisory Board.

*General Function of the Committee:*

To aid the National Institute of Corrections in developing long-range plans, advise on program development, and to support NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

*Date and Time:* 8:30 a.m.–4:30 p.m. on Thursday, August 31, 2017; 8:30 a.m.–12:00 p.m. on Friday, September 1, 2017.

*Location:* National Institute of Corrections, 500 First Street NW., 2nd Floor, Washington, DC 20534, (202) 514-4202.

*Contact Person:* Shaina Vanek, Acting Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. To contact Ms. Vanek, please call (202) 514-202.

*Agenda:* On August 31–September 1, 2017, the Advisory Board will hear updates on the following topics: (1) Agency Report from the NIC Acting Director, (2) briefing from NIC programmatic divisions on current activities and future goals, (3) agency strategic planning session, and (4) partner agency updates.

*Procedure:* On August 31–September 1, 2017, the meetings are open to the

public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 11:30 a.m. and 4:00 p.m. and 4:15 p.m. on August 31, 2017 and between 11:15 a.m. and 11:30 a.m. on September 1, 2017. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 23, 2017.

*General Information:* NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shaina Vanek at least 7 days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

**Shaina Vanek,**

*Acting Director, National Institute of Corrections.*

[FR Doc. 2017-16382 Filed 8-4-17; 8:45 am]

**BILLING CODE 4410-36-M**

## POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017-234; CP2017-235; CP2017-236; CP2017-237; and CP2017-238]

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 9, 2017.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:**

David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. *Docket No(s):* CP2017-234; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed

Under Seal; *Filing Acceptance Date:* August 1, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 9, 2017.

2. *Docket No(s):* CP2017-235; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 1, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 9, 2017.

3. *Docket No(s):* CP2017-236; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 1, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 9, 2017.

4. *Docket No(s):* CP2017-237; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 1, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 9, 2017.

5. *Docket No(s):* CP2017-238; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 1, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 9, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2017-16596 Filed 8-4-17; 8:45 am]

**BILLING CODE 7710-FW-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81275; File No. SR-FINRA-2017-020]

**Self-Regulatory Organizations;  
Financial Industry Regulatory  
Authority, Inc.; Notice of Designation  
of a Longer Period for Commission  
Action on a Proposed Rule Change To  
Adopt FINRA Rule 6898 (Consolidated  
Audit Trail—Fee Dispute Resolution)**

August 1, 2017.

On June 19, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt Rule 6898 (Consolidated Audit Trail—Fee Dispute Resolution). The proposed rule change was published for comment in the **Federal Register** on July 6, 2017.<sup>3</sup> The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. The proposed rule change would establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates October 4, 2017, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 81053 (June 29, 2017), 82 FR 31366 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

disapprove the proposed rule change (File Number SR-FINRA-2017-020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-16514 Filed 8-4-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81278; File No. SR-IEX-2017-24]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Policy Relating to Its Treatment of Trade Reports That It Determines To Be Inconsistent With the Prevailing Market

August 1, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 18, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>6</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>7</sup> The text of the proposed rule change is available at the

Exchange’s Web site at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Trades in listed securities occasionally occur at prices that deviate from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security. The Consolidated Tape Association (“CTA”) Plan and the Nasdaq UTP Plan (“UTP Plan”) each offer participants in such plans with the discretion to append an Aberrant Report Indicator to a trade report to indicate that the market believes that the trade price of a particular trade executed on the participant’s market does not accurately reflect the prevailing market for the security in question.<sup>8</sup> The New York Stock Exchange (“NYSE”), Nasdaq Stock Market (“Nasdaq”) and several other national securities exchanges have adopted policies related to use of the Aberrant Report Indicator for equities trades that, while not eligible for cancellation pursuant to applicable exchange rules governing clearly erroneous executions, are determined not to accurately reflect the prevailing market for the security in question.<sup>9</sup> The Exchange believes that such policies are appropriate in order to identify such trades to vendors and market

participants so that they may exclude such trades from relevant pricing metrics (e.g., high, low and last sale prices). Accordingly, IEX is proposing to adopt a policy substantially similar to the existing policies of such other national securities exchanges as described below.<sup>10</sup>

During the course of surveillance by the Exchange or as a result of notification by another market, listed company,<sup>11</sup> or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange will contact the listing exchange (if the Exchange is not the listing exchange) and other markets (in the case of executions that take place across multiple markets) to seek consensus as to whether the trade price is consistent with the prevailing market for the security. If the Exchange determines that the trade price is inconsistent with the prevailing market for the security after considering the factors discussed below, the Exchange will append an Aberrant Report Indicator to the trade pursuant to applicable CTA and UTP procedures. Appending an Aberrant Report Indicator to the trade will have no effect on the validity of the underlying trade.

IEX currently trades securities on an unlisted trading privilege (“UTP”) basis, that are listed on other exchanges. IEX also intends to become a primary listing exchange. The proposed policy would be applicable to trades that occur on IEX, whether traded on a UTP basis or listed on IEX.

In making the determination to append the Aberrant Report Indicator to a particular trade, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;

<sup>10</sup> See note 9 *supra*.

<sup>11</sup> On June 17, 2016 the Commission granted IEX’s application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. (See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222)). The Exchange plans to begin a listing program in 2017.

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 59151 (December 23, 2008), 74 FR 158 (January 2, 2009) (SR-NASDAQ-2008-100) and Securities Exchange Act Release No. 58736 (October 6, 2008), 73 FR 60380 (October 10, 2008) (SR-NYSE-2008-91).

- Whether the trade represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that its policy shall be to follow the following general guidelines: The Exchange will review whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (*i.e.*, 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the "Reference Price" by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold (percent)
Between \$0 and \$15.00 .....	7
Between \$15.01 and \$50.00 .....	5
In excess of \$50.00 .....	3

The "Reference Price" refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If IEX determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale and the preceding last sale eligible trade would become the new last sale. IEX may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of

input from markets and other market participants.

In connection with the proposed policy, IEX shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security; and will urge vendors to disclose the exclusion from high, low or last sale price data of any trades with an Aberrant Report Indicator and exclude them from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy.<sup>12</sup>

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>13</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, and as described in rule change proposals of NYSE, Nasdaq and other national securities exchanges to adopt a policy on the use of the Aberrant Report Indicator, the Exchange believes that the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) Urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) once the Exchange's listing program begins, informing the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to an Exchange listed stock; and (iii) reminding the users of the information that these are still valid trades in that they were executed an not unwound as in the case of a clearly erroneous trade.

<sup>12</sup> Once its listing program begins, the Exchange will advise each listed company of the aberrant trade policy, including that any trade for which the Aberrant report Indicator is applied will remain a valid trade.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes that the proposed rule change is a reasonable means to alert investors and others that the Exchange believes that the trade price for a particular trade executed in its market does not accurately reflect the prevailing market for the security. Further, the Exchange will use the same factors, including objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. As discussed in the Purpose Section and above, other national securities exchanges have adopted substantially similar policies. Accordingly, the proposed rule change does not raise any new or novel issues that have not already been considered by the Commission.

## B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition. The proposed rule change is designed to enable the Exchange to apply the Aberrant Report Indicator in a manner consistent with its existing use by other national securities exchanges, thereby increasing transparency regarding trades executed at prices that do not reflect the prevailing market, and not to address any competitive issues. The Exchange will utilize the indicator in a consistent manner with respect to all Members and listed companies. The Exchange thus does not believe the proposal will burden competition because it will provide for consistency between the Exchange's policy related to use of the Aberrant Trade Indicator and those of other national securities exchanges.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6)<sup>16</sup> thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange represents that waiver will allow it to append promptly, without the need to wait for the expiration of the 30-day operative delay period, an Aberrant Report Indicator to trades that occur that do not reflect the prevailing market, thereby avoiding confusion regarding pricing of those trades. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that IEX has represented that its proposal is substantially similar to the policies of other exchanges<sup>19</sup> that are currently operative and therefore the proposal does not raise any new or novel issues that have not already been considered by the Commission. Allowing IEX to attach Aberrant Report Indicators will therefore allow IEX to utilize the approach used by other exchanges to flag that information for investors, which should help protect investors by disclosing important information without delay for any such trades that occur on IEX. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>21</sup> of the Act to determine whether the proposed rule

change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-24 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2017-24. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-24 and should be submitted on or before August 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-16513 Filed 8-4-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 32769; File No. 812-14720]

### MVC Capital, Inc., *et al.*; Notice of Application

August 1, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a business development company ("BDC") and certain closed-end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

**APPLICANTS:** MVC Capital, Inc. ("MVC Capital"), TTGA C-I LP Fund, TTGA C-I MMF LP Fund and Tokarz Group Advisers LLC ("Tokarz"), on behalf of itself and its successors.<sup>1</sup>

**FILING DATES:** The application was filed on December 6, 2016, and amended on April 6, 2017, and June 27, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 25, 2017 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> See note 9 *supra*.

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The term "successor" means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549-1090. Applicants: 287 Bowman Avenue, 2nd Floor, Purchase, NY 10577.

**FOR FURTHER INFORMATION CONTACT:**

Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

**Applicants' Representations**

1. MVC Capital is a Delaware corporation organized as a closed-end management investment company that has elected to be regulated as a BDC within the meaning of section 2(a)(48) of the Act.<sup>2</sup> MVC Capital participates in the private equity business generally by providing negotiated debt instruments and/or equity capital. MVC Capital's investments are generally used to fund growth, buyouts, acquisitions, recapitalizations, note purchases, and/or bridge financing. MVC Capital's Objectives and Strategies<sup>3</sup> are to seek to maximize total return from capital appreciation and/or income and it expects to achieve this objective by providing equity and/or debt financing to small and middle-market companies in a variety of industries. The Board of MVC Capital is comprised of seven directors, five of whom are not "interested persons," within the meaning of section 2(a)(19) of the 1940 Act (the "Non-Interested Directors"), of MVC Capital.

2. TTGA C-I MMF LP Fund and TGA C-I LP Fund are each a Delaware limited partnership and each would be

an investment company but for section 3(c)(1) of the Act. TTGA C-I LP Fund and TTGA C-I MMF LP Fund each have an investment objective is to generate both current income and long term capital appreciation. TGA C-I LP Fund is in the process of applying for a license from the Small Business Administration ("SBA") to operate under the Small Business Act of 1958 ("SBA Act"), as a small business investment company (each such licensed entity, a "SBIC Subsidiary").

3. Tokarz is registered with the Commission as an investment adviser under the Investment Advisers Act of (the "Advisers Act"). Tokarz serves as investment adviser to MVC Capital, TTGA C-I LP and TTGA C-I MMF.

4. Applicants seek an order ("Order") to permit one or more Regulated Funds<sup>4</sup> and/or one or more Affiliated Funds<sup>5</sup> to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d-1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;<sup>6</sup> and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers ("Follow-On Investments"). "Co-Investment Transaction" means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. "Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below)

<sup>4</sup> "Regulated Fund" means MVC Capital and any Future Regulated Fund. "Future Regulated Fund" means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term "Adviser" means Tokarz and/or any future investment adviser that controls, is controlled by or is under common control with Tokarz and is registered as an investment adviser under the Advisers Act.

<sup>5</sup> TTGA I LP, TTGA MMF LP and any Future Affiliated Funds are the "Affiliated Funds." "Future Affiliated Fund" means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

<sup>6</sup> The term "private placement transactions" means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.<sup>7</sup>

5. Applicants state that a Regulated Fund may, from time to time, form a one or more Wholly-Owned Investment Subs.<sup>8</sup> Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d-1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

<sup>7</sup> All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

<sup>8</sup> The term "Wholly-Owned Investment Sub" means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund (and, in the case of an SBIC Subsidiary, maintain a license under the SBA Act and issue debentures guaranteed by the SBA); (iii) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act.

<sup>2</sup> Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>3</sup> "Objectives and Strategies" means with respect to a Regulated Fund (defined below), the investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N-2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the "Securities Act"), or under the Securities Exchange Act of 1934 and the Regulated Fund's reports to shareholders.

6. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Fund. The Regulated Funds' Advisers expect that any portfolio company that is an appropriate investment for a Regulated Fund should also be an appropriate investment for one or more other Regulated Funds and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.<sup>9</sup>

7. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act ("Eligible Directors"), and the "required majority," as defined in section 57(o) of the Act ("Required Majority")<sup>10</sup> will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

8. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On

Investments must be submitted to the Eligible Directors.

9. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

10. Applicants also represent that if the Advisers, the principals of the Advisers ("Principals"), or any person controlling, controlled by, or under common control with an Adviser or the Principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as required under condition 14. Applicants believe this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Advisers or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

#### Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d-1 under the Act are applicable to Regulated

Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and/or Affiliated Funds, collectively, in the same transaction, exceeds the

<sup>9</sup> The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

<sup>10</sup> In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).



amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) The Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and;

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,<sup>11</sup> a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a

<sup>11</sup> This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practicable time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount

invested by each such party will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be

distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee<sup>12</sup> is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25% of the Shares, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable State law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer as defined in rule 38a-1(a)(4) will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the Application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

<sup>12</sup> Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32770; 812-14761]

### Northern Lights Fund Trust and Toews Corporation

August 1, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: Northern Lights Fund Trust, 17605 Wright Street, Omaha, NE 68130, and Toews Corporation, 1750 Zion Road, Suite 201, Northfield, NJ 08225.

**FOR FURTHER INFORMATION CONTACT:** Asaf Barouk, Attorney-Advisor, at (202) 551-4029, or Kaitlin Bottock, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(j) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

**APPLICANTS:** Northern Lights Fund Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment

company, and Toews Corporation (the "Initial Adviser"), a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

**FILING DATE:** The application was filed on April 13, 2017.

#### HEARING OR NOTIFICATION OF HEARING:

An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with a broker-dealer that will be registered under the Securities Exchange Act of 1934 ("Exchange Act") (the "Distributor"). Shares will be listed and traded

<sup>1</sup> Applicants request that the order apply to the existing series of the Trust that are index ETFs and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity or any successor thereto, an "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested order, a "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds will operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.<sup>2</sup>

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day,

<sup>2</sup> Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its

shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15214 and #15215; Texas Disaster #TX-00484]**

### Administrative Declaration of a Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas.

**DATES:** Issued on 07/26/2017.

*Physical Loan Application Deadline Date:* 09/25/2017.

*Economic Injury (Eidl) Loan Application Deadline Date:* 04/26/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

Dated 07/26/2017.

*Incident:* Severe Storms, Straight-line Winds, Hail and Flooding.

*Incident Period:* 06/23/2017 through 06/26/2017.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Tom Green.

*Contiguous Counties:*

Texas: Coke, Concho, Irion, Menard, Reagan, Runnels, Schleicher, Sterling.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	3.875
Homeowners without Credit Available Elsewhere .....	1.938
Businesses with Credit Available Elsewhere .....	6.430
Businesses without Credit Available Elsewhere .....	3.215
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.215

	Percent
Non-Profit Organizations with- out Credit Available Else- where .....	2.500

The number assigned to this disaster for physical damage is 15214 B and for economic injury is 15215 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 26, 2017.

**Linda E. McMahon,**  
Administrator.

[FR Doc. 2017-16537 Filed 8-4-17; 8:45 am]

**BILLING CODE 8025-01-P**

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15220 and #15221;  
Alabama Disaster #AL-00081]

#### Administrative Declaration of a Disaster for the State of Alabama

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Alabama.

**DATES:** Issued on July 31, 2017.

*Physical Loan Application Deadline Date:* September 29, 2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* May 1, 2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

#### FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

*Dated:* 07/31/2017.

*Incident:* Tropical Storm Cindy with Tornado and Flooding.

*Incident Period:* 06/21/2017 through 06/23/2017.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Jefferson.

*Contiguous Counties:*

Alabama: Bibb, Blount, Saint Clair, Shelby, Tuscaloosa, Walker.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	3.875
Homeowners without Credit Available Elsewhere .....	1.938
Businesses with Credit Available Elsewhere .....	6.430
Businesses without Credit Available Elsewhere .....	3.215
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.215
Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 15220 8 and for economic injury is 15221 0.

The State which received an EIDL Declaration # is Alabama.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 31, 2017.

**Linda E. McMahon,**  
Administrator.

[FR Doc. 2017-16539 Filed 8-4-17; 8:45 am]

**BILLING CODE 8025-01-P**

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15226 and #15227;  
Nebraska Disaster Number NE-00069]

#### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Nebraska

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA-4325-DR), dated 08/01/2017.

**DATES:** Issued on 08/01/2017.

*Physical Loan Application Deadline Date:* 10/02/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/01/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

#### FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/01/2017, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

*Incident:* Severe Storms, Tornadoes, and Straight-line Winds.

*Incident Period:* 06/12/2017 through 06/17/2017.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Banner, Box Butte, Butler, Cass, Cuming, Dodge, Douglas, Fillmore, Gage, Jefferson, Morrill, Polk, Sarpy, Saunders, Sheridan, Sioux, Thurston, Wayne.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 15226B and for economic injury is 152270.

(Catalog of Federal Domestic Assistance Number 59008)

**Cynthia G. Pitts,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2017-16549 Filed 8-4-17; 8:45 am]

**BILLING CODE 8025-01-P**

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15224 and #15225;  
California Disaster Number CA-00275]

#### Administrative Declaration of a Disaster for the State of California

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of CALIFORNIA.

**DATES:** Issued on 07/31/2017.

*Physical Loan Application Deadline Date: 09/29/2017.*

*Economic Injury (EIDL) Loan Application Deadline Date: 05/01/2018.*

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

Dated July 31, 2017.

*Incident:* Detwiler Fire.

*Incident Period:* July 16, 2017, and continuing.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Mariposa

*Contiguous Counties:*

California: Madera, Merced, Stanislaus, Tuolumne.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	3.500
Homeowners without Credit Available Elsewhere .....	1.750
Businesses with Credit Available Elsewhere .....	6.610
Businesses without Credit Available Elsewhere .....	3.305
Non-Profit Organizations with Credit Available Elsewhere .....	2.500
Non-Profit Organizations without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.305
Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 15224 5 and for economic injury is 15225 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 31, 2017.

**Linda E. McMahon,**  
Administrator.

[FR Doc. 2017-16535 Filed 8-4-17; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15216 and #15217; California Disaster #CA-00274]**

### Administrative Declaration of a Disaster for the State of California.

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of California.

**DATES:** Issued on July 27, 2017.

*Physical Loan Application Deadline Date: 09/25/2017.*

*Economic Injury (Eidl) Loan Application Deadline Date: April 27, 2018.*

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

*Dated:* 07/27/2017.

*Incident:* Wall Fire.

*Incident Period:* 07/07/2017 through 07/17/2017.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Butte.

*Contiguous Counties:*

California: Colusa, Glenn, Plumas, Sutter, Tehama, Yuba.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	3.875
Homeowners without Credit Available Elsewhere .....	1.938
Businesses with Credit Available Elsewhere .....	6.430
Businesses without Credit Available Elsewhere .....	3.215
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.215

	Percent
Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 15216 5 and for economic injury is 15217 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 27, 2017.

**Linda E. McMahon,**  
Administrator.

[FR Doc. 2017-16538 Filed 8-4-17; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF STATE

**[Public Notice: 10076]**

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: "Things of Beauty Growing: British Studio Pottery" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition "Things of Beauty Growing: British Studio Pottery," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, Connecticut, from on or about September 14, 2017, until on or about December 3, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation

of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–16552 Filed 8–4–17; 8:45 am]

**BILLING CODE 4710–05–P**

**DEPARTMENT OF STATE**

[Public Notice: 10077]

**Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Technologies of the Image: Art in 19th-Century Iran” Exhibition**

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition “Technologies of the Image: Art in 19th-Century Iran,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Harvard Art Museums, Cambridge, Massachusetts, from on or about August 26, 2017, until on or about January 7, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice

of these Determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–16553 Filed 8–4–17; 8:45 am]

**BILLING CODE 4710–05–P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. AB 55 (Sub-No. 773X)]

**CSX Transportation, Inc.—  
Abandonment Exemption—in Harlan  
County, KY**

On July 18, 2017, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 1.6-mile rail line on CSXT’s Northern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur, between milepost OMV 250.1 at the end of the line and milepost OMV 248.5 at the wye connecting to the CSXT Glidden Siding in Harlan County, KY (the Line).<sup>1</sup> The Line traverses United States Postal Zip Code 40818, and includes the Creech Station (FSAC 43739/OPSL 20395) at milepost OMV 250.

CSXT states that the Line does not contain federally granted rights-of-way. Any documentation in CSXT’s possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 3, 2017.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,800 filing fee. See 49 CFR 1002.2(f)(25).<sup>2</sup>

<sup>1</sup> According to CSXT, the Line was previously part of the Southern Region but, through a reorganization, it is now a part of the Northern Region. CSXT was authorized to discontinue service over the Line in 2016. *CSX Transp.—Discontinuance of Serv. Exemption—in Harlan Cty., Ky.*, AB 55 (Sub-No. 753X) (STB served Feb. 18, 2016).

<sup>2</sup> The OFA filing fee is currently set at \$1,700. See 49 CFR 1002.2(f)(25). Effective September 1, 2017,

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 28, 2017. Each trail request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 773X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before August 28, 2017.

Persons seeking further information concerning abandonment procedures may contact the Board’s Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board’s Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at [WWW.STB.GOV](http://WWW.STB.GOV).

Decided: August 2, 2017.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2017–16654 Filed 8–4–17; 8:45 am]

**BILLING CODE 4915–01–P**

the fee will become \$1,800. See *Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update*, EP 542 (Sub-No. 25), slip op. app. C at 20 (STB served July 28, 2017).



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Noise Exposure Map Determination,  
Centennial Airport, Englewood, CO**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA announces its determination that the noise exposure maps submitted by the Arapahoe County Public Airport Authority for Centennial Airport are in compliance with applicable requirements.

**DATES:** The date of the FAA's determination on the noise exposure maps is August 1, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Linda Bruce, Federal Aviation Administration, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO 80249, (303) 342-1264, [linda.bruce@faa.gov](mailto:linda.bruce@faa.gov).

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Centennial Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements of 14 CFR part 150, effective January 13, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations during a forecast period that is at least five (5) years in the future, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying report submitted by the Arapahoe County Public Airport Authority. The documentation that

constitutes the "Noise Exposure Maps" (NEM), as defined in Section 150.7 of 14 CFR part 150, and includes an Existing Conditions (2016) Noise Exposure Map, Figure 13, and a Forecast Conditions (2021) Noise Exposure Map, Figure 14, located in Chapter 4 of the official NEM Report submittal.

The NEM contain current and forecast information, including the depiction of the airport and its boundaries, the runway configurations, and land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Day Night Average Sound Level (DNL) 65, 70 and 75 noise contours. This information is contained in the NEM Report. Land uses in close proximity to the airport are shown in Chapter 2, Figure 1. Estimates of private residential population within the 2016 Base Year and the 2021 Future Year noise contours are shown in Chapter 4, Table 12.

The locations of noise monitoring sites are discussed in Chapter 4 and are included on the NEM (Figures 13 and 14). Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Chapter 3, Figures 5 and 6. The type and frequency of aircraft operations (including nighttime operations) are found in Chapter 3, Table 5 through Table 8. For aircraft types not in the INM standard database, FAA-approved substitutions were used to model an aircraft of a similar type, as detailed in Chapter 3 and Appendix H and I.

As discussed in Chapter 5 of the NEM Report, the Arapahoe County Public Airport Authority provided the general public the opportunity to review and comment on the NEM. The public consultation program for the NEM was open to the general public and included a project Web site, social media posting, newsletters, and public open house/meeting. The public comment period on the draft NEM and narrative report opened November 1, 2016 and closed on November 30, 2016. Public open houses were held on February 3, 2016 and November 2, 2016. All comments received during the public comment period and throughout the development of the NEM, as well as responses to these comments, are contained in Appendix G of the NEM Report.

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 1, 2017.

FAA's determination on an airport operator's NEM is limited to a finding

that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure maps and associated documentation are available for examination at the following locations:

Federal Aviation Administration,  
Denver Airports District Office, 26805  
E. 68th Ave., Suite 224, Denver, CO  
80249.

The Arapahoe County Public Airport  
Authority, 7800 S. Peoria Street, Unit  
G1, Englewood, CO 80112.

Issued in Renton, WA, on August 1, 2017.

**Randall S. Fiertz,**

*Director, Airports Division, Northwest  
Mountain Region.*

[FR Doc. 2017-16609 Filed 8-4-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****[Docket No. MARAD-2017-0137]****Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MEDORA; Invitation for Public Comments****AGENCY:** Maritime Administration.**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD-2017-0137. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel MEDORA is:

—*Intended Commercial Use of Vessel:* “Tourism”

—*Geographic Region:* “New York, Rhode Island, Connecticut”

The complete application is given in DOT docket MARAD-2017-0137 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part

388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator.

Dated: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017-16530 Filed 8-4-17; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****[Docket No. MARAD-2017-0133]****Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BELLA VIT; Invitation for Public Comments**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request

for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD-2017-0133. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel BELLA VIT is:

—*Intended Commercial Use of Vessel:* 6 passengers on daily trips

—*Geographic Region:* “Florida”

The complete application is given in DOT docket MARAD-2017-0133 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to

[www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator.

Date: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017-16527 Filed 8-4-17; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2017-0138]

#### **Requested Administrative Waiver of the Coastwise Trade Laws: Vessel REHAB; Invitation for Public Comments**

**AGENCY:** Maritime Administration.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD-2017-0138. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00

p.m., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel REHAB is:

—*Intended Commercial Use of Vessel:*

“Charters for 12 passengers in California coastal waters”

—*Geographic Region:* “California”

The complete application is given in DOT docket MARAD-2017-0138 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### **Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

\* \* \*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator.

Date: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017-16531 Filed 8-4-17; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2017-0134]

#### **Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LUNA; Invitation for Public Comments**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD-2017-0134. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel LUNA is:

—*Intended Commercial Use of Vessel:*  
Sailing catamaran luxury day

charters. Catering to special occasions (anniversary, birthday, engagements, sunsets, etc . . .) of 6-passengers or less. Also ASA 114 cruising catamaran certification training.

—*Geographic Region*: “Florida”.

The complete application is given in DOT docket MARAD–2017–0134 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

\* \* \* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator  
Dated: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017–16529 Filed 8–4–17; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2017–0132]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LANIKAI; Invitation for Public Comments

**AGENCY:** Maritime Administration.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD–2017–0132. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel LANIKAI is:

—*Intended Commercial Use of Vessel*: “high end bay cruise and event charter”

—*Geographic Region*: California, Oregon and Washington State

The complete application is given in DOT docket MARAD–2017–0132 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and

MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator.

Dated: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017–16528 Filed 8–4–17; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2017–0136]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALICE ANNE; Invitation for Public Comments

**AGENCY:** Maritime Administration.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request

for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD-2017-0136. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ALICE ANNE is:

—*Intended Commercial Use of Vessel:* “Sailing charters near coastal”

—*Geographic Region:* “Maine, New Hampshire, Florida, Puerto Rico”

The complete application is given in DOT docket MARAD-2017-0136 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts

these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator.

Dated: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2017-16526 Filed 8-4-17; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2017-0135]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SERENDIPITY; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 6, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD-2017-0135. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this

docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SERENDIPITY is:

—*Intended Commercial Use of Vessel:* “Passenger day charter, sightseeing around Seattle”

—*Geographic Region:* Washington State

The complete application is given in DOT docket MARAD-2017-0135 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Executive Director in lieu of the Maritime Administrator.

Dated: August 1, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017-16532 Filed 8-4-17; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, September 19, 2017.

**FOR FURTHER INFORMATION CONTACT:** Lisa Billups at 1-888-912-1227 or (214) 413-6523.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, September 19, 2017, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Lisa Billups. For more information please contact Lisa Billups at 1-888-912-1227 or 214-413-6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242-1021, or post comments to the Web site: <http://www.improveirs.org>.

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16592 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, September 14, 2017.

**FOR FURTHER INFORMATION CONTACT:** Otis Simpson at 1-888-912-1227 or 202-317-3332.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, September 14, 2017, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1-888-912-1227 or 202-317-3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues. Otis Simpson. For more information please contact Otis Simpson at 1-888-912-1227 or 202-317-3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16594 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, September 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Swayzer at 1-888-912-1227 or 469-801-0769.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, September 27, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Gretchen Swayzer at 1-888-912-1227 or 469-801-0769, TAP Office, 4050 Alpha Rd., Farmers Branch, TX 75244, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16591 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving

customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, September 20, 2017.

**FOR FURTHER INFORMATION CONTACT:** Fred Smith at 1-888-912-1227 or 202-317-3087.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, September 20, 2017, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1-888-912-1227 or 202-317-3087, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>. The committee will be discussing Toll-free issues and public input is welcomed.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16585 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, September 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Antoinette Ross at 1-888-912-1227 or (202) 317-4110.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer

Communications Project Committee will be held Thursday, September 7, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1-888-912-1227 or (202) 317-4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16586 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, September 12, 2017.

**FOR FURTHER INFORMATION CONTACT:** Robert Rosalia at 1-888-912-1227 or (718) 834-2203.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, September 12, 2017, at 12:00 p.m., Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1-888-

912-1227 or (718) 834-2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16593 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, September 12, 2017.

**FOR FURTHER INFORMATION CONTACT:** Matthew O'Sullivan at 1-888-912-1227 or (510) 907-5274.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, September 12, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1-888-912-1227 or (510) 907-5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612-5217 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

The agenda will include a discussion on various special topics with IRS processes.

Dated: August 1, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-16590 Filed 8-4-17; 8:45 am]

**BILLING CODE 4830-01-P**



**DEPARTMENT OF VETERANS  
AFFAIRS****Advisory Committee on Disability  
Compensation, Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Advisory Committee on Disability Compensation (Committee) will meet on September 12–13, 2017. The Committee will meet at 1800 G Street NW., Washington, DC 20001. The meeting will be held on the Eighth Floor in Conference Room 870. The sessions will begin at 8:30 a.m. and end at 4:30 p.m. EST each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee will assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and on other VA benefits programs. Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Stacy Boyd, Designated Federal Officer, Department of Veterans Affairs,

Veterans Benefits Administration, Compensation Service, Policy Staff (211A), 810 Vermont Avenue NW., Washington, DC 20420 or email [Stacy.Boyd@va.gov](mailto:Stacy.Boyd@va.gov). Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the screening process. Due to an increase in security protocols, you should allow an additional 30 minutes before the meeting begins. Routine escorts will be provided until 9:00 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Stacy Boyd or call her at (202) 461–9580.

Dated: August 2, 2017.

**Jelessa M. Burney,**

*Federal Advisory Committee Management  
Officer.*

[FR Doc. 2017–16589 Filed 8–4–17; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF VETERANS  
AFFAIRS****Advisory Committee on Prosthetics  
and Special-Disabilities Programs;  
Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on October 4–5, 2017, in Room 530 at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The meeting will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on October 4 and at 12 noon on October 5. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of VA on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such

technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On October 4, the Committee will receive briefings on Annual Ethics, General Counsel, Rehabilitation Research and Development, Prosthetic and Sensory Aids; Blind Rehabilitation Service; and the National Veterans Sports Programs and Special Events. On October 5, the Committee members will receive briefing from the Connected Care/Telemedicine and Audiology and Speech Pathology.

No time will be allocated for receiving oral presentations from the public; however, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Judy Schafer, Ph.D., Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation and Prosthetic Services (10P4R), VA, 810 Vermont Avenue NW., Washington, DC 20420, or by email at [Judy.Schafer@va.gov](mailto:Judy.Schafer@va.gov). Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 30 minutes before the meeting begins. Any member of the public wishing to attend the meeting should contact Dr. Schafer at (202) 461–7315.

Dated: August 1, 2017.

**LaTonya L. Small,**

*Federal Advisory Committee Management  
Officer.*

[FR Doc. 2017–16507 Filed 8–4–17; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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## Part II

### Department of Energy

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10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps; Final Rule

**DEPARTMENT OF ENERGY****10 CFR Parts 429 and 431****[EERE–2016–BT–TP–0002]****RIN 1904–AD66****Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** On September 20, 2016, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NPR) to establish a new metric, as well as new definitions, test procedures, certification requirements, enforcement testing procedures, and labeling provisions for dedicated-purpose pool pumps (DPPPs). That proposed rulemaking serves as the basis for the final rule. Specifically, DOE is adopting a test procedure for measuring the weighted energy factor (WEF) for certain varieties of dedicated-purpose pool pumps. This final rule incorporates by reference certain sections of the industry test standard Hydraulic Institute (HI) 40.6–2014, “Methods for Rotodynamic Pump Efficiency Testing” as the basis of the adopted test procedure. The definitions, test procedures, certification requirements, enforcement testing procedures, and labeling provisions are based on the recommendations of the DPPP Working Group, which was established under the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC).

**DATES:** The effective date of this rule is September 6, 2017. Compliance with the final rule will be mandatory for representations of WEF and other metrics addressed by the adopted test procedure made on or after February 5, 2018. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on September 6, 2017.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at <https://www.regulations.gov/>

*docket?D=EERE-2016-BT-TP-0002*. The docket Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov).

Ms. Mary Greene, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1817. Email: [Mary.Greene@hq.doe.gov](mailto:Mary.Greene@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference into 10 CFR parts 429 and 431 the following industry standards:

(1) Hydraulic Institute (HI) 40.6–2014, (“HI 40.6–2014–B”) “Methods for Rotodynamic Pump Efficiency Testing,” except for section 40.6.4.1, “Vertically suspended pumps”; section 40.6.4.2, “Submersible pumps”; section 40.6.5.3, “Test report”; section 40.6.5.5, “Test conditions”; section 40.6.5.5.2, “Speed of rotation during testing”; and section 40.6.6.1, “Translation of test results to rated speed of rotation”; and Appendix A, Testing arrangements (normative): A.7, “Testing at temperatures exceeding 30 °C (86 °F)”; and Appendix B, “Reporting of test results (normative)”, copyright 2014.

Copies of HI 40.6–2014 can be obtained from: The Hydraulic Institute at 6 Campus Drive, First Floor North, Parsippany, NJ 07054–4406, (973) 267–9700, or by visiting [www.pumps.org](http://www.pumps.org).

(2) Canadian Standards Association (CSA) C747–2009 (Reaffirmed 2014), “Energy Efficiency Test Methods for Small Motors,” CSA reaffirmed 2014, section 1, “Scope”; section 3, “Definitions”; section 5, “General Test Requirements”; and section 6, “Test Method.”

Copies of CSA C747–2009 (RA 2014) can be obtained from: 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, (800) 463–6727, or by visiting [www.csagroup.org](http://www.csagroup.org).

(3) IEEE Std 113–1985, “IEEE Guide: Test Procedures for Direct-Current Machines,” copyright 1985, section 3.1, “Instrument Selection Factors”; section

3.4 “Power Measurement”; section 3.5 “Power Sources”; section 4.1.2 “Ambient Air”; section 4.1.4 “Direction of Rotation”; section 5.4.1 “Reference Conditions”; and section 5.4.3.2 “Dynamometer or Torquemeter Method.”

(4) IEEE Std 114–2010, “IEEE Standard Test Procedure for Single-Phase Induction Motors,” approved September 30, 2010, section 3.2, “Tests with load”; section 4 “Testing facilities”; section 5.2 “Mechanical measurements”; section 5.3 “Temperature measurements”; and section 6 “Tests.”

Copies of IEEE 113–1985 and IEEE 114–2010 and can be obtained from: IEEE, 45 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060, or by visiting [www.ieee.org](http://www.ieee.org).

(5) NSF International (NSF)/American National Standards Institute (ANSI) Standard 50–2015, (“NSF/ANSI 50–2015”), “Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,” Annex C, “(normative) Test methods for the evaluation of centrifugal pumps,” section C.3, “Self-priming capability,” ANSI approved January 26, 2015.

Copies of NSF/ANSI 50–2015 can be obtained from: NSF International, 789 N. Dixboro Road, Ann Arbor, MI 48105, (734) 769–8010, or by visiting [www.nsf.org](http://www.nsf.org).

(6) UL 1081, (“ANSI/UL 1081–2016”), “Standard for Swimming Pool Pumps, Filters, and Chlorinators,” 7th Edition, ANSI approved October 21, 2016.

Copies of ANSI/UL 1081–2016 can be obtained from: UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or by visiting <http://ul.com>.

See section IV.N for additional information on these standards.

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## I. Authority and Background

Pumps are included in the list of “covered equipment” for which the U.S. Department of Energy (DOE) is authorized to establish and amend energy conservation standards (ECSs) and test procedures (TPs). (42 U.S.C. 6311(1)(A)) Dedicated-purpose pool pumps (DPPPs), which are the subject of this rulemaking, are a kind of pump for which DOE is authorized to establish test procedures and energy conservation standards. In 2016, DOE published in the **Federal Register** two final rules establishing energy conservation standards and a test procedure for

commercial and industrial pumps. 81 FR 4368 (Jan. 26, 2016) and 81 FR 4086 (January 25, 2016), respectively. However, dedicated-purpose pool pumps were specifically excluded from those final rules. Based on recommendations of the industry and DOE’s own analysis, DOE determined that dedicated-purpose pool pumps have a unique application and equipment characteristics that merit a separate analysis. As a result, DOE initiated separate rulemakings to establish energy conservation standards and test procedures for dedicated-purpose pool pumps. The following sections discuss DOE’s authority to establish test procedures for dedicated-purpose pool pumps and relevant background information regarding DOE’s consideration of establishing Federal regulations for this equipment.

### A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended, (42 U.S.C. 6291, *et seq.*; “EPCA” or, “the Act”) sets forth a variety of provisions designed to improve energy efficiency.<sup>1</sup> Part C of Title III, which for editorial reasons was codified as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the Energy Conservation Program for Certain Industrial Equipment. “Pumps” are listed as a type of industrial equipment covered by EPCA, although EPCA does not define the term “pump.” (42 U.S.C. 6311(1)(A)) DOE defined “pump” in a test procedure final rule (January 2016 general pumps test procedure final rule) as equipment designed to move liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action, and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver, and controls. 81 FR 4086 (Jan. 25, 2016). Dedicated-purpose pool pumps, which are the subject of this final rule, meet this definition of a pump and are covered under the pump equipment type.

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE

that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, DOE must publish a proposed test procedure and offer the public an opportunity to present oral and written comments on it. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1))

### B. Background

Dedicated-purpose pool pumps are a style of pump for which DOE has not yet established a test procedure. Although in 2016 DOE completed final rules establishing energy conservation standards (81 FR 4368 (Jan. 26, 2016); January 2016 general pumps ECS final rule) and a test procedure (81 FR 4086 (Jan. 25, 2016); January 2016 general pumps test procedure final rule) for certain categories and configurations of pumps, DOE declined in those rules to establish any requirements applicable to dedicated-purpose pool pumps because of their different equipment characteristics and applications. 81 FR 4086, 4094 (Jan. 25, 2016).

To begin a separate rulemaking for dedicated-purpose pool pumps, on May 8, 2015, DOE issued a Request for Information (RFI), hereafter referred to as the “May 2015 DPPP RFI.” The May 2015 DPPP RFI presented information and requested public comment about any definitions, metrics, test procedures, equipment characteristics, and typical applications relevant to DPPP equipment. 80 FR 26475. Following the publication of the May 2015 DPPP RFI, DOE began a process

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

through the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC) to discuss conducting a negotiated rulemaking to develop standards and a test procedure for dedicated-purpose pool pumps as an alternative to the traditional notice and comment route that DOE had already begun. (Docket No. EERE-2015-BT-STD-0008) On August 25, 2015, DOE published a notice of intent to establish a negotiated rulemaking working group for dedicated-purpose pool pumps (as previously defined, the “DPPP Working Group”) to negotiate, if possible, Federal standards for the energy efficiency of dedicated-purpose pool pumps and to announce the first public meeting. 80 FR 51483.

The DPPP Working Group met four times between September and December 2015<sup>2</sup> and concluded its negotiations on December 8, 2015, with a consensus vote to approve a term sheet containing recommendations to DOE on scope, metric, and the basis of the test procedure (“December 2015 DPPP Working Group recommendations”).<sup>3</sup> The term sheet containing these recommendations is available in the DPPP Working Group docket. (Docket No. EERE-2015-BT-STD-0008, No. 51) ASRAC subsequently voted unanimously to approve the December 2015 DPPP Working Group recommendations during a January 20, 2016, meeting. (Docket No. EERE-2015-BT-STD-0008, No. 0052)

The DPPP Working Group also requested, and was ultimately granted, more time to discuss possible energy conservation standards for this equipment. (Docket No. EERE-2013-BT-NOC-0005, No. 71 at pp. 20–52) The meetings to discuss energy conservation standards commenced on March 21, 2016, (81 FR 10152, 10153) and concluded on June 23, 2016, with approval of a second term sheet (June 2016 DPPP Working Group recommendations). This term sheet contained Working Group recommendations related to scope, definitions, energy conservation standards, performance standards or design requirements for various styles of pumps, applicable test procedure, and labeling for dedicated-purpose pool pumps. (Docket No. EERE-2015-BT-

STD-0008, No. 82) The definitions, DPPP test procedure, sampling provisions, enforcement requirements, and labeling requirements contained in this final rule reflect the recommendations of the DPPP Working Group contained in both the December 2015 and June 2016 DPPP Working Group recommendations.

On September 20, 2016, DOE published a proposed test procedure rulemaking for dedicated-purpose pool pumps (September 2016 DPPP test procedure NOPR), which proposed to implement the recommendations of the DPPP Working Group. 81 FR 64580. On September 26, 2016, DOE held a public meeting to discuss and request comment on the September 2016 DPPP test procedure NOPR (September 2016 DPPP test procedure NOPR public meeting).

The test procedure adopted in this final rule reflects certain recommendations of the DPPP Working Group, as well as input from interested parties received in response to the September 2016 DPPP test procedure NOPR. Provisions of this final rule that are directly pertinent to any of the approved DPPP Working Group recommendations are specified with a citation to the December 2015 or June 2016 DPPP Working Group recommendations and are noted with the recommendation number (e.g., Docket No. EERE-2015-BT-STD-0008, No. #, Recommendation #X at p. Y). Additionally, in developing the provisions of this final rule, DOE also has referenced discussions from the DPPP Working Group meetings regarding potential actions or comments that may not have been formally approved as part of the DPPP Working Group recommendations. These references to discussions or suggestions of the DPPP Working Group not found in the DPPP Working Group recommendations will have a citation to meeting transcripts and the commenter, if applicable (e.g., Docket No. EERE-2015-BT-STD-0008, [Organization], No. X at p. Y).

Finally, in this final rule, DOE responds to all comments received from interested parties in response to the proposals presented in the September 2016 DPPP test procedure NOPR, either during the September 2016 DPPP test procedure NOPR public meeting or in subsequent written comments. In response to the September 2016 DPPP test procedure NOPR, DOE received 11 written comments in addition to the verbal comments made by interested parties during the September 2016 DPPP test procedure NOPR public meeting. The commenters included: The Southern California Gas Company

(SCG), Southern California Edison (SCE), and San Diego Gas and Electric Company (SDG&E), collectively referred to herein as the California Investor-Owned Utilities (CA IOUs); a joint comment by the Appliance Standards Awareness Project (ASAP) and the Natural Resources Defense Council (NRDC);<sup>4</sup> Pentair Aquatic Systems (Pentair); Hayward Industries, Inc. (Hayward); Waterway; Davey Water Products Pty Ltd. (Davey); the California Energy Commission (CEC); the Association of Pool & Spa Professionals (APSP); Nidec Motor Corporation (Nidec); Zodiac Pool Systems, Inc. (Zodiac); and the People’s Republic of China (China). DOE identifies comments received in response to the September 2016 DPPP test procedure NOPR by the commenter, the number of document as listed in the docket maintained at [www.regulations.gov](http://www.regulations.gov) (Docket No. EERE-2016-BT-TP-0002), and the page number of that document where the comment appears (for example: Hayward, No. 4 at p. 1). If a comment was made verbally during the September 2016 DPPP test procedure NOPR public meeting, DOE will also specifically identify those as being located in the NOPR public meeting transcript (for example: CA IOUs, public meeting transcript, No. 3 at p. 66).

Regarding comments, during the September 2016 DPPP test procedure public meeting, Hayward inquired if it was appropriate to suggest any modifications to previously negotiated language, if Hayward believed it could be helpful. (Hayward, Public Meeting Transcript, No. 3 at p. 20) DOE requested feedback on a number of items in the September 2016 DPPP test procedure NOPR and welcomed comment from interested parties on any of the proposals contained in the NOPR. DOE notes that DPPP Working Group ground rules stipulate that each party, except individuals that have previously voted negatively on the final term sheet, agrees not to file negative comments or speak negatively on the proposed rule or its preamble to the extent they have the same substance and effect as the term sheet. (Docket No. EERE-2015-BT-STD-0008, No. 16 at p. 5) However, these rules are not legally binding, but instead are good-faith principles to govern Working Group’s negotiations. Under the Administrative Procedure Act, DOE must consider all relevant comments submitted concerning the

<sup>2</sup> Details of the negotiations sessions can be found in the public meeting transcripts that are posted to the docket for the DPPP Working Group (<https://www.regulations.gov/docket?D=EERE-2015-BT-STD-0008>).

<sup>3</sup> The ground rules of the DPPP Working Group define consensus as no more than three negative votes. (Docket No. EERE-2015-BT-0008-0016 at p. 3) Concurrence was assumed absent overt dissent, evidenced by a negative vote. Abstention was not construed as a negative vote.

<sup>4</sup> ASAP was present at the September 2016 DPPP TP NOPR public meeting. When ASAP commented at the public meeting, comments will be indicated as ASAP. ASAP and NRDC submitted a joint written comment and written comments will be indicated as ASAP and NRDC.

September 2016 DPPP test procedure NOPR, and make modifications to the proposals, as necessary, in this final rule. (5 U.S.C. 553(c)) Specific required modifications are discussed in their relevant sections.

On January 18, 2017, DOE published a direct final rule containing energy conservation standards for dedicated-purpose pool pumps (e.g., the January 2017 DPPP DFR), based on the recommendations of the DPPP Working Group, with a compliance date of July 19, 2021. 82 FR 5650. After reviewing comments submitted during the 110-day comment period, on May 26, 2017, DOE published a confirmation of effective date and compliance date for the DFR. 82 FR 24218.

## II. Synopsis of the Final Rule

In this final rule, DOE is amending subpart Y to 10 CFR part 431 to include definitions and a test procedure applicable to dedicated-purpose pool pumps. However, DOE is establishing a test procedure for only a specific subset of dedicated-purpose pool pumps. Specifically, this test procedure applies only to self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps. The test procedure does not apply to integral cartridge-filter pool pumps, integral sand-filter pool pumps, storable electric spa pumps, or rigid electric spa pumps. The test procedure is applicable to those varieties of pool pumps for which DOE established performance-based standards in the January 2017 DPPP DFR (82 FR 5650, 5743), as well as additional categories of dedicated-purpose pool pumps for which the DPPP Working Group did not propose standards. (See section III.B.6 for more information on the applicability of the new test procedure to different DPPP varieties).

In this final rule, DOE defines a new metric, the weighted energy factor (WEF), to characterize the energy performance of dedicated-purpose pool pumps within the scope of this test procedure. As described further in section III.C, WEF is determined as a weighted average of water volumetric flow rate divided by the input power to the dedicated-purpose pool pump at different load points. The specific load points and weights depend on the variety of the dedicated-purpose pool pump and the number of operating speeds with which it is distributed in commerce. In addition, the DPPP test procedure includes a test method to determine the self-priming capability of pool filter pumps to effectively differentiate self-priming and non-self-priming pool filter pumps. Finally, the

DPPP test procedure provides optional methods for determining the WEF for replacement DPPP motors.

DOE's new test method includes measurements of volumetric flow rate and input power, both of which are required to calculate WEF, as well as other quantities to effectively characterize the rated DPPP performance (e.g., head, hydraulic output power, rotating speed). For consistent and uniform measurement of these values, DOE is incorporating by reference the test methods established in HI 40.6–2014, “Methods for Rotodynamic Pump Efficiency Testing,” with certain exceptions. DOE reviewed the relevant sections of HI 40.6–2014 and determined that HI 40.6–2014, in conjunction with the additional test methods and calculations adopted in this test procedure, will produce test results that reflect the energy efficiency, energy use, or estimated operating costs of a dedicated-purpose pool pump during a representative average use cycle. (42 U.S.C. 6314(a)(2)) DOE also reviewed the burdens associated with conducting the test procedure, including HI 40.6–2014, and, based on the results of such analysis, found that the test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE's analysis of the burdens associated with the test procedure is presented in section IV.B.

This final rule also establishes requirements regarding the sampling plan, certification requirements, and representations for dedicated-purpose pool pumps at subpart B of part 429 of title 10 of the Code of Federal Regulations. The sampling plan requirements are similar to those for several other types of commercial equipment and are appropriate for dedicated-purpose pool pumps based on the expected range of measurement uncertainty and manufacturing tolerances for this equipment (see section III.K.1 for more detailed information). As DOE's DPPP test procedure contains methods for calculating the energy factor (EF),<sup>5</sup> overall (wire-to-water) efficiency, driver power input, DPPP nominal motor horsepower,<sup>6</sup> DPPP motor total

<sup>5</sup> EF is a metric that is common in the DPPP industry and which describes the volume of water provided by a dedicated-purpose pool pump divided by the input power required to pump that amount of water in units of gallons per watt-hour (gal/Wh). The relevant test methods for determining EF are described in section III.F.

<sup>6</sup> In this final rule, DOE is adopting specific test methods and metrics applicable to DPPP nominal motor horsepower, DPPP total horsepower, DPPP service factor, and rated hydraulic horsepower of dedicated-purpose pool pumps. See section III.G.1 for a discussion of the different horsepower metrics

horsepower, DPPP service factor, pump power output (hydraulic horsepower), and true power factor (PF), DOE also is adopting provisions regarding allowable representations of energy consumption, energy efficiency, and other relevant metrics manufacturers may make regarding DPPP performance (section III.H). DOE is also clarifying the appropriate use of such metrics through the use of two appendices: Appendix B, which contains metrics and test methods applicable to testing dedicated-purpose pool pumps prior to the compliance date of the established energy conservation standards for such equipment (i.e., prior to July 19, 2021), and appendix C, which contains metrics and test methods applicable to testing dedicated-purpose pool pumps on or after the compliance date of any applicable energy conservation standards (i.e., on and after July 19, 2021).

Starting on July 19, 2021, the compliance date for the energy conservation standards that DOE established for dedicated-purpose pool pumps, all dedicated-purpose pool pumps within the scope of those standards must be certified in accordance with the amended subpart Y of part 431 and the applicable sampling requirements in 10 CFR 429.59. DOE is also requiring that, beginning on July 19, 2021, certain certification and compliance information must be reported to DOE on an annual basis (section III.K.2). Similarly, all representations regarding the energy efficiency or energy use of dedicated-purpose pool pumps within the scope of this DPPP test procedure should be made by testing in accordance with the adopted DPPP test procedure (appendix B) beginning 180 days after the publication date of this test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) DOE understands that manufacturers of dedicated-purpose pool pumps likely have historical test data (e.g., existing pump curves) that were developed with methods consistent with the new DOE test procedure. DOE also understands that the DPPP test procedure is based on the same testing methodology used to generate most existing pump performance information. Consequently, DOE does not expect that manufacturers will need to regenerate all of the historical test data, as long as the original rating method is consistent with the methods adopted in this final rule, and the original tested units remain

applicable to dedicated-purpose pool pumps and the adopted testing requirements applicable to these metrics.

representative of the basic model's current design. If the testing methods used to generate historical ratings for DPPP basic models are substantially different from those adopted in this final rule or the manufacturer has changed the design of the basic model, the representations resulting from the

historical methods would no longer be valid. This is discussed in more detail in section III.F.

### III. Discussion

In this final rule, DOE amends subpart Y of 10 CFR part 431 to add a new DPPP test procedure and related definitions,

amends 10 CFR 429.59 to add a new sampling plan for dedicated-purpose pool pumps, and amends 10 CFR 429.110 and 429.134 to add new enforcement provisions for this equipment. The amendments are shown in Table III.1.

TABLE III.1—SUMMARY OF AMENDMENTS IN THIS FINAL RULE, THEIR LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION

Location	Amendment	Summary of additions	Applicable preamble discussion
10 CFR 429.59 .....	Test Procedure Sampling Plan and Certification Requirements.	Minimum number of dedicated-purpose pool pumps to be tested to rate a DPPP basic model, determination of representative values, and certification reporting requirements.	Section III.K and III.H.
10 CFR 429.110 & 429.134	Enforcement Provisions ....	Method for DOE determination of compliance of DPPP basic models.	Section III.K.
10 CFR 431.462 .....	Definitions .....	Definitions pertinent to categorizing and testing of dedicated-purpose pool pumps.	Section III.B.
10 CFR 431.464, Appendix B, & Appendix C.	Test Procedure .....	Instructions for determining the WEF (and other applicable performance characteristics) for applicable varieties of dedicated-purpose pool pumps and replacement DPPP motors.	Sections III.C, III.D, III.E, III.H, III.F, and III.J.
10 CFR 431.466 .....	Labeling .....	Requirements for labeling dedicated-purpose pool pumps.	Section III.I.

The following sections discuss comments received from interested parties and DOE's final adopted provisions regarding (A) the scope of this rulemaking; (B) definitions related to the categorizing and testing of dedicated-purpose pool pumps; (C) the metric used to describe the energy performance of dedicated-purpose pool pumps; (D) the test procedure for different varieties of dedicated-purpose pool pumps; (E) the incorporation of HI 40.6–2014 as the test method for determining pump performance; (F) representations of energy use and energy efficiency; (G) additional test methods necessary to determine rated hydraulic horsepower,<sup>7</sup> other DPPP horsepower metrics,<sup>8</sup> and the self-priming capability of dedicated-purpose pool pumps; (H) labeling requirements for dedicated-purpose pool pumps; (I) an optional test method for replacement DPPP motors; and (J) certification and enforcement provisions for tested DPPP models.

<sup>7</sup> Rated hydraulic horsepower refers to the hydraulic horsepower at maximum speed and full impeller diameter on the reference curve for the rated pump and is the metric DOE is referencing to describe the capacity of dedicated-purpose pool pumps. (See section III.G.1.)

<sup>8</sup> DOE is adopting, based on the June 2016 DPPP Working Group recommendations, standardized methods for determining nominal motor horsepower, total horsepower, and service factor of a dedicated-purpose pool pump to support labeling provisions. The adopted test methods are discussed in section III.F and the labeling requirements are discussed in section III.I.

#### A. General Comments

CA IOUs submitted a general comment expressing their support of the test procedure proposed in the September 2016 DPPP test procedure NOPR and stating that the proposal reflected issues negotiated in the DPPP Working Group in 2015 and 2016. CA IOUs also encouraged DOE to publish a final rule for both the test procedure and energy conservation standards by the end of 2016 so that the standards can take effect as soon as possible. (CA IOUs, No. 9 at pp. 1–2) DOE appreciates the support of CA IOUs and has finalized this test procedure final rule in 2016. DOE addressed the energy conservation standards recommended by the DPPP Working Group in the January 2017 DPPP DFR. 82 FR 5650.

In response to the September 2016 DPPP test procedure NOPR, Hayward raised concerns on the number of requests for comment and new items outside the DPPP Working Group discussions and the possible need for a supplemental NOPR (SNOPR). (Hayward, Public Meeting Transcript, No. 3 at pp. 5–6) DOE acknowledges that in the September 2016 DPPP test procedure NOPR, DOE proposed a new DPPP test procedure, as well as several items recommended by the DPPP Working Group related to DPPP test procedure, such as definitions and test methods. In addition, the September 2016 DPPP test procedure NOPR contained several items recommended by the DPPP Working Group that are not

directly related to the DPPP test procedure, such as labeling and certification requirements. Finally, the September 2016 DPPP test procedure NOPR contained a number of items that were not directly discussed or recommended by the DPPP Working Group, but are necessary to fully implement DOE's regulatory framework, such as a sampling plan for the determination of representative values and enforcement requirements.

While DOE recognizes that the number and breadth of the proposals contained in the September 2016 DPPP test procedure NOPR was significant, DOE maintains that many of the items are necessary to ensure DOE's DPPP regulations, once adopted, are comprehensive and robust. For example, the sampling plan provisions are necessary to describe how to determine uniform and consistent representative values from the test procedure results.

In addition, as discussed at length in the DPPP Working Group negotiations, the energy conservation standard recommended by the DPPP Working Group contains both performance and prescriptive requirements for different varieties of dedicated-purpose pool pumps, which must be implemented in a direct final rule. However, such a direct final rule can only contain the explicit consensus recommendations of the DPPP Working Group, since any additional provisions would not have the opportunity for public comment



through the direct final rule process. Therefore, some items typically implemented in standards rulemakings, such as certification reporting requirements and labeling provisions, were included in the September 2016 DPPP test procedure NOPR, because, while they implemented the recommendations of the DPPP Working Group, they contained additional details and minor provisions not explicitly recommended by the DPPP Working Group (see section III.I and III.K.2 for more information on the labeling and certification provisions, respectively).

Therefore, while DOE understands that the breadth of the proposals contained in the September 2016 DPPP test procedure NOPR may be greater than typical test procedure NOPRs, DOE believes that all the proposals are necessary to fully implement the recommendations of the DPPP Working Group and ensure comprehensive and robust DPPP regulations. In addition, DOE notes that interested parties had the opportunity to comment on all DOE's proposals in response to the September 2016 DPPP test procedure NOPR and DOE has provided answers to all comments, and, where appropriate, has amended its proposal in response to the comments. Therefore, DOE believes that an SNOPR is not necessary.

In written comments, APSP and Pentair noted that DOE based the various efficiency levels considered for energy conservation standards during the DPPP Working Group negotiations on the WEF scores estimated for individual pump models using data from the ENERGY STAR Qualified Products List database. Pentair commented, and APSP agreed, that analysis they conducted using actual test data generated WEF scores that were different from DOE's estimates, sometimes by up to 20 percent. APSP and Pentair recommended that DOE reevaluate the various efficiency levels using actual test data instead of estimates based on ENERGY STAR data points. (APSP, No. 8 at p. 2; Pentair, No. 11 at p. 6) DOE interprets APSP and Pentair's comments to be specific to self-priming pool filter pumps, which are the only variety of pool pump that are listed in the ENERGY STAR Qualified Products List database.<sup>9</sup>

In response to APSP and Pentair, DOE notes that the tested data points for all self-priming pool filter pumps were based on certification data from the ENERGY STAR Qualified Products List

database, as well as other entities besides ENERGY STAR. DOE incorporated certification data from the CEC (including current and historical data), APSP, and ENERGY STAR, and included other data provided by DPPP manufacturers in DOE's Self-Priming Pool Filter Pump database.<sup>10</sup> (Docket No. EERE-2015-BT-STD-0008, No. 94 at pp. 24–30) DOE presumes the data in these databases to be accurate and determined in accordance with the appropriate test procedures. As discussed further in section III.H, these test procedures are consistent with the test procedure recommended by the DPPP Working Group and adopted by DOE in this final rule. Therefore, the data in the ENERGY STAR, CEC, and APSP databases are deemed to be consistent with data generated in accordance with the adopted DPPP test procedure.

DOE notes that WEF scores used to establish efficiency levels for single-speed and two-speed self-priming pool filter pumps were directly calculated from actual known test data points at appropriate load points, and no mathematical estimations were employed. However, as discussed in the DPPP Working Group, DOE acknowledges that, for variable-speed self-priming pool filter pumps, the WEF scores used to establish efficiency levels considered for energy conservation standards were mathematically estimated from certain known test data points contained in DOE's database. (Docket No. EERE-2015-BT-STD-0008, No. 94 at pp. 26–31)

DOE pursued the mathematical estimation of WEF scores because the variable-speed self-priming pool filter pump performance data contained in above-mentioned databases does not always align with the load points (*i.e.*, speed settings) needed to evaluate each pump against the WEF metric. Specifically, DOE's mathematical estimations were derived from a regression analyses of known variable-speed self-priming pool filter pump data points. Furthermore, as DOE described during the DPPP Working Group meetings, DOE used actual test stand data provided by DPPP manufacturers to validate the estimation methodology. (Docket No. EERE-2015-BT-STD-0008, No. 94 at pp. 28–34) Ultimately, DOE publically presented its regression methodology to the DPPP Working Group for input and no members of the DPPP Working Group offered sustained objections to the methodology or results

during the Working Group meetings.<sup>11</sup> (Docket No. EERE-2015-BT-STD-0008, No. 94 at pp. 24–34)

In addition, and as discussed in the DPPP Working Group, DOE acknowledges that the estimated WEF scores for variable-speed pumps are subject to mathematically uncertainty. As a part of the DPPP Working Group meetings, DOE mathematically quantified this uncertainty and provided the DPPP Working Group with a revised variable-speed efficiency level option that would conservatively account for this uncertainty. (Docket No. EERE-2015-BT-STD-0008, No. 100 at pp. 118–121) Ultimately, as a part of their energy conservation standard negotiations, the DPPP Working Group decided not to account for such uncertainty in the variable-speed efficiency level. (Docket No. EERE-2015-BT-STD-0008, No. 92 at pp. 281–283) Consequently, DOE believes that the concept of WEF score uncertainty for variable-speed pumps was well understood by the DPPP Working Group, including the commenters.

In general, DOE developed efficiency level options for the DPPP Working Group based on the best data and analytical methods that were available at the time. In light of the concerns raised by APSP and Pentair, DOE reevaluated its variable-speed WEF estimation methodology, but found no technical inaccuracies. In the absence of new data (noting that APSP and Pentair did not submit to DOE any test data to substantiate their claims), DOE has no means to adjust its variable-speed WEF estimation methodology at this time. Furthermore, DOE believes that data uncertainty concerns raised by APSP and Pentair were sufficiently considered by the DPPP Working Group, and adjustment to DOE's analysis, based on new test data (if made available), would not materially impact the recommendations of the DPPP Working Group. Therefore, DOE will not reevaluate self-priming pool filter pump efficiency levels using new test data, as recommended by APSP and Pentair. DOE notes that DOE established energy conservation standards as part of the January 2017 DPPP DFR. 82 FR 5650, 5743.

In written comments, Nidec stated that it believed that there should be a

<sup>11</sup> The CA IOUs initially objected to the results of the regression methodology, saying that previous CA IOU efforts had gathered data that did not fit the regression trend presented by DOE. (Docket No. EERE-2015-BT-STD-0008, CA IOUs, No. 94 at pp. 30–31) In a subsequent meeting the CA IOUs rescinded their objection and stated that previous CA IOUs analysis shows the same results as DOE's regression methodology. (Docket No. EERE-2015-BT-STD-0008, CA IOUs, No. 95 at pp. 4–5).

<sup>9</sup> ENERGY STAR maintains a database of certified products, including pool pumps. See <https://www.energystar.gov/productfinder/product/certified-pool-pumps/results>.

<sup>10</sup> Docket No. EERE-2015-BT-STD-0008, No. 102.

public comment period for the related energy conservation standards and requested information on the timing of the ECS rulemaking as well as the opportunity for public review and comment. (Nidec, No. 10 at p. 4) DOE notes that the related energy conservation standards were negotiated through the DPPP Working Group and approved by ASRAC,<sup>12</sup> and that notice of all meetings were published in the **Federal Register**.<sup>13</sup> All meetings were open and provided opportunity for public comment. In addition, the public had 110 days to submit public comments on the DFR, which were considered by DOE prior to confirming the effective date and compliance date for the energy conservation standards. 82 FR 24218; May 26, 2017.

### B. Definitions

In this final rule, DOE is adopting definitions for the term dedicated-purpose pool pump, several sub-varieties of dedicated-purpose pool pumps, and the variations of DPPP operating speed configurations. DOE is also adopting definitions pertinent to categorizing and testing dedicated-purpose pool pumps in accordance with the DOE test procedure. In general, ASAP and NRDC commented that they agreed with DOE's proposed definitions. (ASAP and NRDC, No. 12 at p. 1) DOE appreciates the support of ASAP and NRDC. DOE presents these definitions in the subsequent sections. In addition, DOE is adopting definitions and methods for determining several terms related to describing DPPP capacity, including "rated hydraulic horsepower," "dedicated-purpose pool pump nominal motor horsepower," "dedicated-purpose pool pump service factor," and "dedicated-purpose pool pump motor total horsepower." These terms are discussed in detail in section III.G.1.

#### 1. Existing Pump Definitions

DOE notes that because dedicated-purpose pool pumps are a style of pump, some terms defined at 10 CFR 431.462, as adopted in the January 2016 general pumps test procedure final rule, also apply to dedicated-purpose pool pumps, including bare pump, mechanical equipment, driver, and control. 81 FR 4086, 4090–4091 (Jan. 25, 2016). In addition, as dedicated-purpose pool pumps are end suction pumps, DOE believes the definition for end suction pump established in the January

2016 general pumps test procedure final rule also applies to dedicated-purpose pool pumps. In the January 2016 general pumps test procedure final rule, DOE defined "end suction pump" as a single-stage, rotodynamic pump in which the liquid enters the bare pump in a direction parallel to the impeller shaft and on the side opposite the bare pump's driver-end. The liquid is discharged through a volute in a plane perpendicular to the shaft. 81 FR 4086, 4146 (Jan. 25, 2016). DOE notes that, as it is referenced in the definition for end suction pump, the definition for rotodynamic pump established in the January 2016 general pumps test procedure final rule also applies to dedicated-purpose pool pumps. *Id.* at 4147.

In the September 2016 DPPP test procedure NOPR, DOE used the term "dry rotor" as a part of the definition of pressure cleaner booster pumps. 81 FR 64580, 64591 (Sept. 20, 2016). DOE also discussed how the term "dry rotor pump" applies to dedicated-purpose pool pumps and asserted that, to DOE's knowledge, all dedicated-purpose pool pumps are dry rotor (as defined in the January 2016 general pumps final rule<sup>14</sup>). 81 FR 64580, 64587 (Sept. 20, 2016) DOE requested comment on the assertion that all dedicated-purpose pool pumps are dry rotor pumps.

In written comments, APSP, Hayward, and Zodiac commented that all of the dedicated-purpose pool pumps covered by this rule are typically dry rotor pumps. (APSP, No. 8 at p.3; Hayward, No. 6 at p. 1; Zodiac, No. 13 at p. 1) However, APSP and Zodiac also requested a clearer definition of dry rotor and wet rotor style pumps. APSP, No. 8 at p. 3; Zodiac, No. 13 at p. 1) APSP, Hayward, and Zodiac also inquired how a wet rotor pump (such as a pump with a water-cooled motor) may be impacted by the dry rotor definition. (APSP, No. 8 at p.3; Hayward, No. 6 at p. 1; Zodiac, No. 13 at p. 1)

In response to APSP and Zodiac's request for clarification regarding the terms dry rotor and wet rotor, DOE defined dry rotor and wet rotor pumps in the January 2016 general pumps test procedure final rule. 81 FR 4086, 4146 (Jan. 25, 2016). Dry rotor pump means a pump in which the motor rotor is not immersed in the pumped fluid. Conversely, a wet rotor pump is one in which the motor rotor is immersed in the pumped liquid. *Id.* at 4101 (Jan. 25, 2016) The rotor is the portion of the motor that rotates and provides torque

to output shaft (which may be integral to the rotor). For most motors varieties, including all known dedicated-purpose pool pump motors, the rotor is an internal component of the motor, which resides inside the motor stator. If any significant amount of liquid is present in-between the stator and rotor during operation, the rotation of the motor rotor will cause the liquid to surround or cover the rotor (*i.e.*, immerse it). Consequently, such a configuration would be considered a wet rotor pump. Alternatively, if a dedicated-purpose pool pump has no significant amount of liquid between stator and rotor, the rotation of the rotation will not cause the liquid to surround or cover the rotor (*i.e.*, immerse it), and thus such a configuration would not be considered a dry rotor pump. DOE notes that the water-resistance of, or ability to immerse, the exterior casing of a motor has no relation to the definition of wet rotor and dry rotor pump.

DOE believes these definitions are clear and unambiguous and do not require further clarification.

Regarding how a wet rotor pump would be treated under DOE's new dedicated-purpose pool pump regulations, DOE understands that pressure cleaner booster pumps are the only variety of dedicated-purpose pool pump that use the term "dry rotor" within the definition (*i.e.*, a pressure cleaner booster pump is a dry rotor pump). Consequently, the test procedure will only be applicable to dry rotor pressure cleaner booster pumps, as non-dry rotor variants would not meet the definition of a pressure cleaner booster pump. The remaining varieties of dedicated purpose pool pumps make no specification to whether the pump is, or is not, dry rotor. Consequently, both dry rotor and non-dry rotor pumps will meet certain definitions established in this final rule, and would thus be subject to the test procedure.

DOE received no other comments regarding the use of dry rotor, within the definition of pressure cleaner booster pump. Therefore, the term dry rotor pump will remain a part of the definition of pressure cleaner booster pump.

Additional definitions from the January 2016 general pumps test procedure final rule that apply to dedicated-purpose pool pumps, include the definition of basic model (discussed further in section III.B.8), the definitions incorporated by reference from HI 40.6–2014 (discussed further in section III.E.1), and the definition of self-priming pump (discussed further in section III.B.3.a). While other terms may be applicable to the description of

<sup>12</sup> Docket No. EERE–2013–BT–NOC–0005, No. 87.

<sup>13</sup> See [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=67](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=67) and <https://www.regulations.gov/docket?D=EERE-2015-BT-STD-0008>.

<sup>14</sup> DOE defines "dry rotor pump" as a pump in which the motor rotor is not immersed in the pumped fluid. 10 CFR 431.462.

dedicated-purpose pool pumps, they are not referenced in any of the DPPP definitions or specifications of the DPPP test procedure.

## 2. Definition of Dedicated-Purpose Pool Pump

Consistent with the recommendations of the DPPP Working Group, DOE proposed in the September 2016 DPPP test procedure NOPR to define dedicated-purpose pool pump as follows:

*Dedicated-purpose pool pump* comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps, integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps. 81 FR 64580, 64587 (Sept. 20, 2016).

DOE received no comments in response to the proposed definition of dedicated-purpose pool pump. Therefore, DOE is adopting the definition of dedicated-purpose pool pump as proposed in the September 2016 DPPP test procedure NOPR.

In the September 2016 DPPP test procedure NOPR, DOE also proposed definitions for each DPPP variety based on DPPP Working Group recommendations. These definitions are discussed in more detail in sections III.B.3, III.B.4, and III.B.5.

## 3. Pool Filter Pumps

Pool filter pumps are the most common style of dedicated-purpose pool pump. A “pool filter pump” or “pool circulation pump” is typically used to refer to an end suction style pump that circulates water through a pool and filtration system and removes large debris using a basket strainer or other device. Consistent with the recommendations of the DPPP Working Group, in the September 2016 DPPP test procedure NOPR, DOE proposed to define pool filter pump as an end suction pump that

(a) either:

(1) Includes an integrated basket strainer, or

(2) does not include an integrated basket strainer, but requires a basket strainer for operation, as stated in manufacturer literature provided with the pump; and

(b) may be distributed in commerce connected to, or packaged with, a sand filter, removable cartridge filter, or other filtration accessory, so long as the filtration accessory is connected with consumer-removable connections that allow the pump to be plumbed to bypass the filtration accessory. (Docket No. EERE-2015-BT-STD-0008, No. 51

Recommendation #4 at pp. 2–3); 81 FR 64580, 64587 (Sept. 20, 2016).

In the September 2016 DPPP test procedure NOPR, DOE requested comment on the proposed definition of pool filter pump. No comments, negative or positive, were received regarding the proposed definition of pool filter pump. Therefore, in this final rule, DOE adopts the definition of pool filter pump as proposed in the September 2016 DPPP test procedure NOPR.

### a. Definition of a Basket Strainer and Filtration Accessories

The definition of pool filter pump includes the use of a basket strainer to differentiate pool filter pumps from other varieties of end suction pumps. To clearly and unambiguously establish what would be considered a basket strainer when applying the pool filter pump definition, the DPPP Working Group recommended to define “basket strainer” as “a perforated or otherwise porous receptacle that prevents solid debris from entering a pump, when mounted within a housing on the suction side of a pump. The basket strainer receptacle is capable of passing spherical solids of 1 mm in diameter, and can be removed by hand or using only simple tools. Simple tools include but are not limited to a screwdriver, pliers, and an open-ended wrench.” (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #4 at pp. 2–3)

To establish what would be considered a “removable cartridge filter” and to differentiate removable cartridge filters from basket strainers, the DPPP Working Group recommended that the definitions of basket strainer and removable cartridge filter include a specification for the diameter of spherical solid that the basket strainer or filter component is capable of passing. The DPPP Working Group recommended a definition for “removable cartridge filter” as “a filter component with fixed dimensions that captures and removes suspended particles from water flowing through the unit. The removable cartridge filter is not capable of passing spherical solids of 1 mm in diameter, can be removed from the filter housing by hand or using only simple tools, and is not a sand filter. Simple tools include but are not limited to a screwdriver, pliers, and an open-ended wrench.” (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #4 at pp. 2–3)

Similarly, to clearly differentiate sand filters from other filtration apparatuses, such as basket strainers and removable cartridge filters, the DPPP Working Group recommended defining “sand

filter” as “a device designed to filter water through sand or an alternate sand-type media.” The definition for sand filter is intended to include all depth filters that allow fluid to pass through while retaining particulates and debris in a porous filtration medium. In the DPPP equipment industry, such a filter is most commonly made with sand, but could also be made with other media such as diatomaceous earth. (Docket No. EERE-2015-BT-STD-0008, No. 58 at pp. 91–96)

In the September 2016 DPPP test procedure NOPR, DOE noted that these definitions are useful in clearly differentiating different styles of pool filter pumps, including integral cartridge-filter and sand-filter pool pumps, from those that have non-integral filtration accessories. As such, DOE proposed adopting the definitions for basket strainer, removable cartridge filter, and sand filter, as recommended by the DPPP Working Group. 81 FR 64580; 64587–88 (Sept. 20, 2016).

In response to the proposed definition of basket strainer, Pentair submitted a written comment stating that there is a possibility of manufacturers using the 1mm size restriction as a loophole to create a strainer basket with very small openings, which would not meet DOE’s definition for pool filter pumps. Pentair acknowledged that doing so would significantly limit the utility of the pump in pool filtration applications. However, Pentair noted that consumers could throw away the original basket strainer and replace it with one that has more reasonable opening size. (Pentair, No. 11 at p. 1)

In response, DOE acknowledges Pentair’s concern regarding the potential for manufacturers to circumvent the regulation through adjusting the opening size on the basket strainer. In the DPPP Working Group negotiations, the DPPP Working Group discussed the opening size as the clearest and most unambiguous way to differentiate between basket strainers and removable cartridge filters. During that discussion, Hayward raised the possibility that the filter basket opening size may limit future design flexibility. DOE responded that DOE definitions and analysis are developed around filter basket designs that are currently available on the market. DOE also noted that a filtration apparatus that does not meet the definition established in this rule could be considered in a future rulemakings, if such designs are developed. (Docket No. EERE-2015-BT-STD-0008, CA IOUs, DOE, Waterway, and Zodiac, No. 53 at pp. 13–19) Also, as noted by Pentair, the opening size of the basket filter directly impacts its utility as a

filtration device. Therefore, DOE believes that the market will effectively discourage manufacturers from producing pool filter pumps with ineffective basket filters. However, DOE will monitor the market as this test procedure and associated energy conservation standards take effect and, if DOE observes any such circumvention, DOE may reconsider the definition of basket strainer as necessary.

DOE received no other comments related to the proposed definitions of basket strainer, removable cartridge filter, or sand filter. Therefore, DOE is adopting the definitions of these terms as proposed in the September 2016 DPPP test procedure NOPR.

#### b. Self-Priming and Non-Self-Priming Pool Filter Pumps

All pool filter pumps on the market are either self-priming or non-self-priming. Self-priming pumps are able to lift liquid that originates below the centerline of the pump inlet and, after initial manual priming, are able to subsequently re-prime without the use of external vacuum sources, manual filling, or a foot valve. In contrast, non-self-priming pumps must be manually primed prior to start up each time. Accordingly, self-priming pumps are constructed in a different manner than non-self-priming pumps and have different energy use characteristics. Specifically, self-priming pool filter pumps typically incorporate a diffuser that maintains the prime on the pump between periods of operation. The diffuser affects the energy performance of the pump because it can decrease the maximum achievable energy efficiency.

In addition, whether a pool filter pump is self-priming or not also impacts the typical applications for self-priming versus non-self-priming pool filter pumps. Specifically, in the DPPP equipment industry, self-priming pool filter pumps are often referred to as “inground pool pumps” and non-self-priming pool filter pumps are often referred to as “aboveground pool pumps.” Accordingly, the DPPP Working Group proposed to analyze self-priming and non-self-priming pool filter pumps separately. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #2A at p. 2)

In the September 2016 DPPP test procedure NOPR, based on feedback from the DPPP Working Group, DOE proposed definitions for self-priming and non-self-priming pool filter pumps, as well as a method to differentiate the two. Specifically, in the September 2016 DPPP test procedure NOPR, DOE proposed the following definitions for

self-priming and non-self-priming pool filter pumps:

*Self-priming pool filter pump* means a pool filter pump that is certified under NSF/ANSI 50–2015<sup>15</sup> to be self-priming or is capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time less than or equal to 10.0 minutes, when tested in accordance with NSF/ANSI 50–2015, and is not a waterfall pump.

*Non-self-priming pool filter pump* means a pool filter pump that is not certified under NSF/ANSI 50–2015 to be self-priming and is not capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time less than or equal to 10.0 minutes, when tested in accordance with NSF/ANSI 50–2015, and is not a waterfall pump. 81 FR 64580, 64647–68 (Sept. 20, 2016).

The definitions are consistent with the NSF/ANSI 50–2015 self-priming designation such that any pumps certified as self-priming under NSF/ANSI 50–2015 would be treated as self-priming pool filter pumps under the DOE regulations, even if such a pump was certified based on manufacturer’s specified or recommended vertical lift and/or true priming time. However, as certification with NSF/ANSI 50–2015 is voluntary, the definitions also adopt specific criteria in terms of vertical lift and true priming time that are applicable to any pool filter pumps not certified as self-priming under NSF/ANSI 50–2015. The criterion for vertical lift is specified as 5.0 feet, consistent with the NSF/ANSI 50–2015 requirement. This ensures that all pool filter pumps that can achieve a vertical lift of 5.0 feet (within the required true priming time), whether they are certified with NSF/ANSI or not, would be considered a self-priming pool filter pump under DOE’s regulations.

The criterion for true priming time recommended by the DPPP Working Group and proposed in the September 2016 DPPP test procedure NOPR is 10.0 minutes, as opposed to the 6 minutes specified in NSF/ANSI 50–2015. 81 FR 64580, 64589 and 64647 (Sept. 20, 2016). This is because the 6 minute threshold is a minimum, and manufacturers believed that some pool filter pumps that are currently considered self-priming pool filter pumps in the industry have true priming times greater than 6 minutes. Thus, the DPPP Working Group believed that 10.0 minutes was more appropriate and comprehensive. 81 FR

64580, 64589 (Sept. 20, 2016). DOE proposed a vertical lift and true priming time of 5.0 feet and 10.0 minutes in order to clearly specify the appropriate and required level of precision in the definitions and test method. *Id.*

DOE notes that these definitions rely on the NSF/ANSI 50–2015 test method to determine self-priming capability. DOE’s test procedure for determining self-priming capability, including the incorporation by reference of the NSF/ANSI 50–2015 test method, is discussed further in section III.G.2.

The definitions proposed for self-priming and non-self-priming pool filter pumps in the September 2016 DPPP test procedure NOPR also explicitly exclude waterfall pumps. As discussed in section III.B.4.a, waterfall pumps are pool filter pumps and could meet a definition of either self-priming or non-self-priming, unless explicitly excluded from those definitions. Because DOE intended for these pumps to be treated specifically as waterfall pumps, the proposed definitions for self-priming and non-self-priming pool filter pumps both specifically excluded waterfall pumps.

DOE notes that, in the January 2016 general pumps test procedure final rule, DOE already defined the term “self-priming pump” as a pump that (1) is designed to lift liquid that originates below the centerline of the pump inlet; (2) contains at least one internal recirculation passage; and (3) requires a manual filling of the pump casing prior to initial start-up, but is able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve. 81 FR 4086, 4147 (Jan. 25, 2016). However, in the September 2016 DPPP test procedure NOPR, DOE discussed how this definition is not applicable to dedicated-purpose pool pumps because pool filter pumps typically do not contain a recirculation passage to accomplish the self-priming function. Therefore, DOE proposed to revise the definition of self-priming pump to ensure the definition of self-priming is comprehensive and consistent with the new definitions for self-priming and non-self-priming pool filter pump. Specifically, DOE proposed in the September 2016 DPPP test procedure NOPR to modify the existing definition of self-priming pump to also include self-priming pool filter pumps, in addition to the other referenced criteria. 81 FR 64580, 64648 (Sept. 20, 2016).

In response to DOE’s proposal, CEC commented in support of DOE’s proposal to differentiate self-priming from non-self-priming pool pumps

<sup>15</sup> NSF International (NSF)/ANSI Standard 50–2015, (“NSF/ANSI 50–2015”), “Equipment for Swimming Pools, Spas, hot Tubs and Other Recreational Water Facilities.”

using the NSF/ANSI 50–2015. (CEC, No. 7 at p.2)

During the September 2016 public meeting, Hayward requested clarification of the reference to NSF/ANSI 50–2015 asking if changes are made to that standard, would manufacturers be bound to those changes. (Hayward, Public Meeting Transcript, No. 3 at p. 20) As stated during the September 2016 public meeting, DOE incorporates by reference a specific edition of a specific standard. If that standard is updated, DOE would need to update the reference within their test procedure. Until such an update is made, manufacturers are held to the standard adopted in the DOE test procedure.

Hayward also submitted a written comment in response to DOE's proposed definition of self-priming and non-self-priming pool filter pumps. Hayward recommended that DOE remove the requirement to test whether a non-self-priming pump is capable of self-priming. Hayward stated that requiring pumps not marketed or sold as self-priming pumps to be tested for self-priming capability would be unnecessarily burdensome. Hayward recommended that the definition of non-self-priming pumps be revised to designate pumps that are "not marketed or sold as self-priming," rather than pumps that are not capable of self-priming. (Hayward, No. 6 at p.1)

In response to Hayward's inquiry, DOE clarifies that manufacturers may certify their pump models to DOE as non-self-priming without testing, so long as manufacturers are certain that the non-self-priming pump model has vertical lift (of lack thereof) and true priming time characteristics consistent with DOE's definition of non-self-priming pool filter pump. That is, the non-self-priming pump would meet the definition of non-self-priming, if it were to be tested in accordance with DOE's test method for verifying self-priming capability (see section III.G.2). Consequently, manufacturers are not required to actually test each non-self-priming pump model to prove that such a pump is non-self-priming. However, DOE will use the definition of non-self-priming pool filter pump and the additional test method described in section III.G.2 to ensure that manufacturers are properly categorizing their pool filter pumps as either self-priming or non-self-priming in accordance with the adopted definitions. Consequently, DOE believes that the definition of non-self-priming pool filter pumps does not introduce any additional testing burden, as DOE believes that manufacturers already

know whether their pumps currently marketed as "non-self-priming" would meet the definition established in this final rule. With no additional burden, DOE believes that amending the definition of non-self-priming pool filter pumps is not warranted. In addition, DOE notes that establishing a clear, quantitative threshold to differentiate self-priming and non-self-priming pool filter pumps is important to confirm that the pumps are appropriately differentiated based on the utility (*i.e.*, self-priming capability) they are able to provide.

Hayward also requested clarification regarding the definition of self-priming pool filter pumps. APSP and Hayward asked if 10 minutes is the maximum time allowed to reach prime and meet the self-priming requirement. (APSP, No. 8 at p. 3; Hayward, No. 6 at p.1)

The proposed definition for a self-priming pool filter pump allows manufacturers to meet the definition of self-priming pool filter pump in one of two ways. Manufacturers may show that a pool filter pump is self-priming by certifying the pool filter pump as self-priming in accordance with NSF/ANSI 50–2015. Alternatively, manufacturers may show that a pool filter pump is a self-priming pool filter pump by demonstrating that a pump is capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time of less than or equal to 10.0 minutes, without certifying the pump to NSF/ANSI 50–2015. 81 FR 64580, 64589. The NSF/ANSI 50–2015 standard does not specify a maximum true priming time. Section C.3.5 of NSF/ANSI 50–2015 states that, "if a pump is to be designated as self-priming, the true priming time for each run shall not exceed 6 min or the manufacturer's recommended time, whichever is greater." To certify a pump's self-priming capability under NSF/ANSI 50–2015, a manufacturer could recommend a true priming time greater than 10.0 minutes. Under the proposed definition of self-priming pool filter pump, if a pool filter pump has true priming time greater than 10.0 minutes but is certified as self-priming under NSF/ANSI 50–2015, that pump would qualify as a self-priming pool filter pump. However, if the pump is not certified under NSF/ANSI 50–2015, the pump must be capable of re-priming to a vertical lift of 5.0 feet with a true priming time of less than or equal to 10.0 minutes in order to be classified as a self-priming pump.

In written comments, Pentair pointed out that NSF requires pumps to prime to 10 feet in order to be classified as "self-priming" without listing a qualifying height, but allows a product

to be certified as self-priming in the 5 to 10 foot range if accompanied by a qualifying height and time to prime. Pentair added that DOE's proposal does not require the listing of the qualifying height and suggested that the definition of self-priming pump should reflect the non-qualified definition of 10 feet. (Pentair, No. 11 at p. 1)

Pentair also disagreed with DOE's attempt to separate dedicated-purpose pool pumps intended for aboveground and inground applications by using non-self-priming and self-priming characteristics, respectively. Specifically, Pentair argued that there are many self-priming aboveground pumps currently in the market that would become non-viable under DOE's proposed definitions. Pentair further notes that while modifications could be made to these existing aboveground pumps to prevent them from priming, such changes would negatively impact pump efficiency and reduce energy savings for this category of non-self-priming pumps. (Pentair, No. 11 at p. 2)

In response to Pentair's comments regarding DOE's specified vertical lift of 5.0 feet, DOE recommended the vertical lift of 5.0 feet based on the discussions and recommendation of the DPPP Working Group. (Docket No. EERE–2015–BT–STD–0008, Hayward, No. 79 at pp. 160; Zodiac, No. 79 at pp. 161–162) DOE notes that, as mentioned previously, this ensures that all pool filter pumps that can achieve a vertical lift of 5.0 feet (within the required true priming time), whether they are certified with NSF/ANSI or not, would be considered a self-priming pool filter pump under DOE's regulations. DOE reviewed NSF/ANSI 50–2015 and notes that, contrary to Pentair's comment, section 6.9.1 of NSF/ANSI 50–2015 requires that the maximum vertical lift be specified if the pump is designated as self-priming, as determined in accordance with section C.3 of NSF/ANSI 50–2015. NSF/ANSI 50–2015 does not appear to provide the discretion indicated by Pentair if the vertical lift is 10 feet. In this final rule, DOE is adopting a definition specifying a vertical lift of 5.0 feet, as proposed in the September 2016 DPPP test procedure NOPR, to maintain consistency with NSF/ANSI 50–2015.

In response to Pentair's comments regarding the differentiation of self-priming and non-self-priming pool filter pumps, DOE proposed to differentiate these two styles of pool filter pumps based on the recommendations of the DPPP Working Group. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #2A at p. 2) DOE acknowledges that one factor associated

with the differentiation of self-priming and non-self-priming pool filter pumps is their ability to service inground pools. That is, the capability of a pump to self-prime is a fundamental utility associated with the ability of a pump to service an inground pool, as the pump is typically installed on the ground next to the pool, above the water line of the pool. Therefore, the pump must be self-priming in order to reliably circulate water on a continual basis. Conversely, pumps serving aboveground pools are typically installed below the water line and, therefore, gravity can serve to maintain the prime in the pump. Although pumps serving aboveground pools could be self-priming or non-self-priming, self-priming pumps do not provide the same utility to aboveground pools because they require modifications that reduce the energy efficiency benefits that self-priming pumps provide. Non-self-priming pumps do not require those modifications, which benefits the consumer and provides a distinct utility to the end user. This utility is a feature that allows DOE to separate the two styles of pumps into distinct equipment classes. In addition, self-priming pumps are more efficient than non-self-priming pumps, and merging the product classes could result in the unavailability of the feature that non-self-priming pumps provide. For these reasons, consistent with the recommendations of the DPPP Working Group, in this final rule DOE adopts definitions of non-self-priming and self-priming pool filter pumps based on their capability to self-prime.

DOE received no other comments related to the proposed definitions for self-priming and non-self-priming pool filter pumps or the revision to the definition of self-priming pump established in the January 2016 general pumps test procedure final rule. However, in reviewing the definitions, DOE notes that the vertical lift and true priming time should refer to the DOE test method to verifying self-priming capability, which DOE is adopting in this final rule (see section III.G.2) as opposed to the test method in NSF/ANSI 50–2015. As discussed in section III.G.2, DOE's test method for verifying self-priming capability incorporates by reference the test method in section C.3 of NSF/ANSI 50–2015, but also adds several clarifications and additions to improve the repeatability and consistency of the test. DOE believes this is consistent with the DPPP Working Group's intent, whereby a self-priming pool filter pump would either be certified with NSF/ANSI 50–2015 or have the specified vertical lift and true

priming time. DOE's self-priming capability test method is designed to verify the criteria established by the DPPP Working Group. Therefore, in this final rule, DOE is adopting definitions for self-priming and non-self-priming pool filter pumps based on certification with NSF/ANSI 50–2015 and the criteria recommended by the DPPP Working Group, as tested pursuant to the DOE test procedure, with minor modifications regarding the level of precision required by the criteria. DOE is also adopting the changes proposed to the definition of self-priming pump to align with the new definitions for self-priming and non-self-priming pool filter pumps.

#### c. Integral Cartridge-Filter and Integral Sand-Filter Pool Pumps

Most self-priming and non-self-priming filter pumps are installed in permanent inground or aboveground pools. However, a significant market also exists for temporary pools; *e.g.*, inflatable or collapsible pools that can be deflated or collapsed when not in use. Although temporary pools also require dedicated-purpose pool pumps to circulate and filter the water, these pools are typically served by a unique style of dedicated-purpose pool pump that is exclusively distributed in commerce with a temporary pool or as a replacement pump for such a pool. Some of these pumps are integrally and permanently mounted to a filtration accessory such as an integral cartridge-filter or sand-filter. These particular pumps can only be operated with the integral filtration accessory inline—the filtration accessory cannot be plumbed out for the purposes of testing. The DPPP Working Group recommended establishing prescriptive requirements for these pumps, which requires that timers be distributed in commerce with the pumps. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #2B at pp. 1–2) With a prescriptive standard, the performance-related metric (*i.e.*, WEF) and test procedure would not be necessary and, therefore, not applicable.

To clearly differentiate integral cartridge-filter and integral sand-filter pool pumps from other varieties of dedicated-purpose pool pumps, the DPPP Working Group recommended definitions for integral cartridge-filter pool pump and integral sand-filter pool pump. The recommended definitions create differentiation based on the physical construction of the pump. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at pp. 2–3) In the September 2016 DPPP test procedure NOPR, DOE proposed to

adopt the definitions for integral cartridge-filter pool pump and integral sand-filter pool pump recommended by the DPPP Working Group, with a few minor changes to use consistent terminology in both definitions. Specifically, DOE proposed the following definitions for integral cartridge-filter pool pump and integral sand-filter pool pump:

*Integral cartridge-filter pool pump* means a pump that requires a removable cartridge filter, installed on the suction side of the pump, for operation; and the cartridge filter cannot be bypassed.

*Integral sand-filter pool pump* means a pump distributed in commerce with a sand filter that cannot be bypassed. 81 FR 64580, 64590 (Sept. 20, 2016).

APSP stated that the proposed definitions for integral cartridge-filter pool pump and integral sand-filter pool pump are acceptable and consistent with DPPP Working Group meetings. (APSP, No. 8 at p. 3) DOE appreciates APSP's comment. DOE received no other comments related to the proposed definitions for integral cartridge-filter pool pump and integral sand-filter pool pump. Therefore, DOE is adopting the definitions as proposed in the September 2016 DPPP test procedure NOPR.

#### 4. Other Varieties of Dedicated-Purpose Pool Pumps

In addition to pool filter pumps, DOE identified varieties of dedicated-purpose pool pumps that are used to drive auxiliary pool equipment such as pool cleaners and water features. These pumps, which include waterfall pumps and pressure cleaner booster pumps, are discussed in greater detail in the following sections.

##### a. Waterfall Pumps

Within the pool pump industry, a certain variety of pump exists, which is specifically intended to pump water for water features, such as waterfalls. These pumps are similar in construction to pool filter pumps, except that they only have limited head and speed operating ranges. DOE refers to these pumps as waterfall pumps. Waterfall pumps meet the definition of pool filter pump discussed in section III.B.3.a, but are always equipped with a lower speed motor (approximately 1,800 rpm) in order to provide the specific high flow, low head characteristics required for typical water feature applications. Based on this unique construction and end user utility, the DPPP Working Group recommended to differentiate waterfall pumps from self-priming and non-self-priming pool filter pumps. (Docket No. EERE–2015–BT–STD–0008, No. 51

Recommendation #4 at pp. 2–4) In accordance with the intent of the December 2015 DPPP Working Group’s recommendation, DOE proposed in the September 2016 DPPP test procedure NOPR to define waterfall pump as “a pool filter pump with maximum head less than or equal to 30 feet, and a maximum speed less than or equal to 1,800 rpm.” 81 FR 64580, 64590 (Sept. 20, 2016). This definition uses maximum head and a specific maximum speed to distinguish waterfall pumps from other varieties of pool filter pumps.

During the September 2016 DPPP test procedure NOPR public meeting, Pentair pointed out that there was a minor typo on page 81 FR 64590 regarding the description of waterfall pumps. Pentair noted that the text read “the DPPP Working Group agreed that all currently available waterfall pumps utilize 4-pole motors, as their low flow requirements do not necessitate the use of a higher speed 2-pole motor” where it should actually refer to their low head requirements, not low flow requirements. (Pentair, Public Meeting Transcript, No. 3 at p. 74) APSP and Pentair reiterated this point in their written comments, pointing out that it is the low head requirements that make use of a higher speed 2-pole motor unnecessary. (APSP, No. 8 at p. 2; Pentair, No. 11 at p. 5) DOE agrees with APSP and Pentair that the statement should refer to the low head requirements of waterfall pumps and that the preamble text in the NOPR was in error.

DOE received no other comments related to the proposed definition of waterfall pump. Therefore, DOE is adopting the definition of waterfall pump as proposed in the September 2016 DPPP test procedure NOPR, with the clarification that the maximum head value is the value certified to DOE.

#### b. Pressure Cleaner Booster Pumps

Pressure cleaner booster pumps provide water pressure that is used to propel pressure-side pool cleaners along the bottom of the pool and remove debris as the cleaner moves. To perform this task, a pressure cleaner booster pump must provide high head (*i.e.*, pressure) at a low flow.

The DPPP Working Group recommended that pressure cleaner booster pumps be included as a variety of dedicated-purpose pool pump, subject to the test procedure, and specifically considered in the analysis to support potential energy conservation standards. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #1 at p. 1, #2A at p. 2, and #6 at p. 5)

However, the DPPP Working Group did not recommend a definition of pressure cleaner booster pump due to the difficulty of effectively differentiating pressure cleaner booster pumps from other DPPP varieties. (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #4 at p. 3) Instead, the DPPP Working Group recommended that DOE develop an appropriate definition.

After considering the design, construction, and performance of pressure cleaner booster pumps, DOE determined that the most effective differentiator for pressure cleaner booster pumps is the fact that they are designed and marketed for a specific pressure-side cleaning application. Therefore, to effectively differentiate pressure cleaner booster pumps from other pump varieties, DOE proposed in the September 2016 DPPP test procedure NOPR to define “pressure cleaner booster pump” as an end suction, dry rotor pump designed and marketed for pressure-side pool cleaner applications, and which may be UL listed under ANSI/UL 1081–2014, “Standard for Swimming Pool Pumps, Filters, and Chlorinators.” 81 FR 64580, 65491–92 (Sept. 20, 2016).

In response to definition of pressure cleaner booster pump proposed in the September 2016 DPPP test procedure NOPR, the CA IOUs suggested that DOE should include the UL listing as a requirement rather than an illustrative characteristic. CA IOUs justified this suggestion, by reasoning that in order to be used on pools, most local inspection authorities would want to see the UL label. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 18–19) Conversely, in written comments, Hayward, APSP, and Zodiac asserted that the phrase “be UL listed” should not be included in the definition of pressure cleaner booster pump as it would require a manufacturer to work solely with UL and that DOE should not seek to require manufacturers to list pressure cleaner booster pumps in accordance with a 3rd party, voluntary standard. (Hayward, No. 6, at p. 2; APSP, No. 8 at p. 3; Zodiac, No. 13 at pp. 1–2) Hayward, APSP, and Zodiac further questioned the benefit of adding a statement referencing the UL standard since, while UL 1081 is the *de facto* standard and is applicable to all DPPP, it is not a requirement in the United States to certify products to the standard and it does not necessarily distinguish a pressure cleaner booster pump from a non-pressure cleaner booster pump. (*Id.*)

As noted during the September 2016 DPPP test procedure NOPR public meeting, DOE does not wish to narrow

or restrict the definition of pressure cleaner booster pump to only those pumps UL listed under ANSI/UL 1081, because DOE is not fully confident that all pressure cleaner booster pumps require such a listing in order to be installed in all pools in the United States. This understanding is consistent with Hayward, APSP, and Zodiac’s written comments suggesting removing the reference to ANSI/UL 1081 certification. Therefore, because it is possible that some jurisdictions may not require such a listing, DOE does not wish to limit the definition of pressure cleaner booster pump to pumps with a UL listing if the pump is in fact designed and marketed for pressure-side pool cleaner applications. However, DOE agrees with CA IOUs that the majority of jurisdictions require UL listing for installation of dedicated-purpose pool pumps, including pressure cleaner booster pumps, in pools. This is why DOE believes that such listing is a useful characteristic to use for distinguishing pressure cleaner booster pumps from other end suction pumps not intended for pools. While helpful, this reference does not require pressure cleaner booster pumps to be certified with UL or any other 3rd party entity. The controlling criteria for determining whether a pump meets DOE’s definition of pressure cleaner booster pump is whether that pump is designed and marketed for pressure-side cleaner applications. As such, DOE believes that referencing ANSI/UL 1081 certification continues to be a useful, illustrative indicator for identifying pressure cleaner booster pumps, although it is not mandatory and pressure cleaner booster pumps may still meet the definition regardless of whether they are certified under ANSI/UL 1081 or not. That is, DOE believes the intended application of the pump, as indicated by the pump’s own marketing literature, is the best indication of whether or not that pump is a pressure cleaner booster pump, regardless of whether the pump is UL listed under ANSI/UL 1081.

APSP, Hayward, and Zodiac also pointed out in their written comments that the current edition of ANSI/UL 1081 is the 2016 version of the standard, not the 2014 version proposed to be incorporated by reference in the September 2016 DPPP test procedure NOPR. (APSP, No. 8 at p.3; Hayward, No. 6 at pp. 1–2; Zodiac, No. 13 at pp. 1–2) DOE has reviewed ANSI/UL 1081–2016 and finds it to be similar in content and intent to the 2014 edition of the standard. Therefore, in order to reference the most recent and relevant version, DOE is incorporating by



reference ANSI/UL 1081–2016 in this final rule.

No other comments were received related to the proposed definition of pressure cleaner booster pump. Therefore, for the reasons discussed in this section and the September 2016 DPPP test procedure NOPR, DOE is adopting the definition of pressure cleaner booster pump as proposed in the September 2016 DPPP test procedure NOPR, except the adopted definition references ANSI/UL 1081–2016 instead of ANSI/UL 1081–2014.

To provide clarity and remove ambiguity when applying the definition for pressure cleaner booster pump, DOE also proposed a definition for “designed and marketed” that DOE would use when determining the applicability of any DPPP test procedure or energy conservation standards to such pumps. Specifically, DOE proposed to define “designed and marketed” as meaning that the equipment is specifically designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed for that application, with the designation on the packaging and all publicly available documents (e.g., product literature, catalogs, and packaging labels). 81 FR 64580, 64647 (Sept. 20, 2016).

In response to this proposal, CA IOUs expressed concern that the inclusion of “designed and marketed” in the definition of pressure cleaner booster pump could create a loophole where products could be used as pressure cleaner booster pumps even if not specifically marketed for that purpose and, in turn, avoid regulation. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 23–24) ASAP also commented that the proposed definition for designed and marketed seemed to be narrow, pointing to a scenario where a pump is designed as a booster pump for pool applications but is also marketed by the manufacturer for another application. ASAP requested clarification if in this scenario the pump in question would be required to meet the standard. (ASAP, Public Meeting Transcript, No. 3 at pp. 22–23) In written comments, ASAP and NRDC also encouraged DOE to attempt to ensure that the definition for “designed and marketed” does not contain any loopholes. Specifically, ASAP and NRDC supported the definition of designed and marketed presented in the regulatory text portion of the September 2016 DPPP test procedure NOPR over the one presented in the preamble.<sup>16</sup>

Additionally, ASAP and NRDC encouraged DOE to consider whether removing the word “specifically” may further reduce the possibility for potential loopholes and suggested removing the word “all” from “all publicly available documents” to ensure pumps are considered pressure cleaner booster pumps in cases where the designation is on some publicly available documents, but not others. (ASAP and NRDC, No. 12 at pp. 1–2) Similarly, CA IOUs recommended that DOE remove the word “specifically,” in order to address pumps designed for both pressure cleaner and domestic water booster pump applications, and change “all” to “any” publicly available documents. (CA IOUs, No. 9 at pp. 2–3)

In response to CA IOUs’ concern about pumps used as pressure cleaner booster pumps but not marketed as such, DOE acknowledges that some individuals may attempt to use inappropriate pumps to run pressure-side cleaner applications. However, it is DOE’s understanding that pressure-side pool cleaners are designed to be paired with pumps with specific characteristics (e.g., high head and low flow) and that manufacturers all design and market specific pumps intended for this application. DOE also notes that pumps without these specific characteristics would not provide adequate utility in the pressure-side pool application and manufacturers would recommend against the use of such pumps with their pressure-side cleaners. Therefore, while DOE acknowledges the concern of CA IOUs, DOE cannot control the actions of installers who may select inappropriate pumps for pressure-side cleaner applications, and DOE believes that all pumps appropriate for pressure-side pool cleaner applications are currently specifically designed and marketed as such. DOE will continue to monitor the market to ensure that this continues to be the case and that all pumps appropriate for pressure-side pool cleaner applications continue to be characterized as pressure cleaner booster pumps in the future.

In response to the concerns of ASAP, NRDC, and CA IOUs regarding the applicability of the designed and marketed definition to pumps that may be marketed for a variety of applications, in addition to pressure-side pool cleaner applications, DOE agrees with the commenters. Specifically, all pumps designed and

marketed for pressure-cleaner booster applications should be treated as pressure cleaner booster pumps, regardless of any other applications for which they may be designed and marketed. DOE acknowledges that the definition of designed and marketed that was presented in the preamble of the September 2016 DPPP test procedure NOPR (81 FR 64580, 64592) was slightly different than that contained in the proposed regulatory text (*Id.* at 64647) and may have created confusion regarding the applicability of the designed and marketed definition. Specifically, in the preamble, DOE discussed defining the term designed and marketed as meaning that the equipment is exclusively designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed solely for that application, with the designation on the packaging and all publicly available documents (e.g., product literature, catalogs, and packaging labels). *Id.* DOE notes that the definition presented in the preamble was incorrect and the definition presented in the regulatory text on page 64647 of the NOPR was the intended definition. DOE believes that the definition contained in the regulatory text, which does not refer to the exclusivity of the design or that the equipment would be solely marketed for a specific purpose, is broader and inclusive of pumps that would be designed and marketed for pressure-side cleaner applications in addition to other applications. However, DOE agrees with ASAP, NRDC, and CA IOUs, that removal of the term “specifically” would help clarify this aspect of the definition. In addition, DOE agrees that changing from “all publicly available documents” to “any publicly available documents” best fulfills the intent of the definition, as any marketing of a pump as a pressure cleaner booster pump would show that the pump is intended to be treated as a pressure cleaner booster pump.

Therefore, DOE is defining the term “designed and marketed” as set forth in the regulatory text of this rule.

## 5. Storable and Rigid Electric Spa Pumps

In addition to swimming pools, dedicated-purpose pool pumps are also used in spas to circulate and filter the water and operate water jets. Similar to swimming pools, spas can range in size and construction style. Specifically, spas can be portable or permanent installations and can be constructed out of a variety of materials depending on the installation.

<sup>16</sup> The definition of designed and marketed contained in the preamble (81 FR 64580, 6464592;

Sept. 20, 2016) did not exactly match the definition of designed and marketed proposed in the regulatory text (*Id.* at 64647). Specifically, the preamble definition contained the words “exclusively” and “solely.”

Permanent, inground spas are typically constructed similar to small inground pools and use the same pumps (*i.e.*, self-priming pool filter pumps described in section III.B.3.a) to operate the spa. Conversely, for portable spas, a specific-purpose pump is typically distributed in commerce with the portable spa that is specifically designed and marketed for portable electric spa applications only. Such portable electric spa applications can be further differentiated into two general categories: Storable electric spas and rigid electric spas. A storable electric spa refers to an inflatable or otherwise temporary spa that can be collapsed or compacted into a storable unit. In contrast, a rigid electric spa is constructed with rigid, typically more durable, materials and cannot be collapsed or compacted for storage.

In the September 2016 DPPP test procedure NOPR, consistent with the recommendations of the DPPP Working Group (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #4 at p. 3), DOE proposed definitions for “storable electric spa pump” and “rigid electric spa pump” to effectively differentiate them from other varieties of pumps. Specifically, DOE proposed to define “storable electric spa pump” as a pump that is distributed in commerce with one or more of the following: (1) An integral heater and (2) an integral air pump. DOE also proposed to define “rigid electric spa pump” as an end suction pump that does not contain an integrated basket strainer or require a basket strainer for operation as stated in the manufacturer literature provided with the pump, and meets the following three criteria: (1) Is assembled with four through bolts that hold the motor rear endplate, rear bearing, rotor, front bearing, front endplate, and the bare pump together as an integral unit; (2) is constructed with buttress threads at the inlet and discharge of the bare pump; and (3) uses a casing or volute and connections constructed of a non-metallic material. 81 FR 64580, 64592–93 (Sept. 20, 2016).

DOE received no comments negative or positive related to the proposed definitions for storable electric spa pump and rigid electric spa pump. Therefore, DOE is adopting the definitions for these terms as proposed in the September 2016 DPPP test procedure NOPR.

In addition, DOE notes that the definitions for storable electric spa pump, as well as the definitions for integral cartridge-filter pool pump and integral sand-filter pool pump (see section III.B.3.c), all utilize the term “integral” as part of the definition. In

support of these definitions, the DPPP Working Group recommended a definition for integral. (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #4 at p. 7) In the September 2016 DPPP test procedure NOPR, DOE proposed the definition recommended by the DPPP Working Group and proposed defining the term “integral” as a part of the device that cannot be removed without compromising the device’s function or destroying the physical integrity of the unit. 81 FR 64580, 64592–93 (Sept. 20, 2016).

DOE received no comments related to the proposed definition of the term “integral.” Therefore, DOE is adopting the definition for integral as proposed in the September 2016 DPPP test procedure NOPR.

#### 6. Applicability of Test Procedure Based on Pump Configuration

In addition to specific definitions, the DPPP Working Group also discussed and provided recommendations pertinent to the scope of applicability of the DPPP test procedure. Ultimately, the DPPP Working Group recommended that the scope of the test procedure be limited to only the following specific varieties of dedicated-purpose pool pumps:

- Self-priming pool filter pumps,
- non-self-priming pool filter pumps,
- waterfall pumps, and
- pressure cleaner booster pumps.

(Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendations #1, #2A, and #2B at pp. 1–2; Recommendation #6 at p. 5)

In addition, although not included in the December 2015 DPPP Working Group recommendations, the DPPP Working Group discussed and ultimately recommended not considering a test procedure or standards for self-priming and non-self-priming pool filter pumps with a rated hydraulic horsepower<sup>17</sup> greater than 2.5 hp. (Docket No. EERE-2015-BT-STD-0008, No. 79 at pp. 33–54)

The DPPP Working Group also recommended that the test procedure and reporting requirements be applicable to all self-priming pool filter pumps—both those served by single-phase power and those served by three-phase power.<sup>18</sup> (Docket No. EERE-

2015-BT-STD-0008, No. 82 Recommendations #3 at p. 2) Consistent with the DPPP Working Group recommendations, DOE proposed in the September 2016 DPPP test procedure NOPR that the test procedure, sampling requirements, labeling, and related provisions for dedicated-purpose pool pumps apply to all self-priming pool filter pumps and non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower, as well as waterfall pumps and pressure cleaner booster pumps, regardless of the phase of the supplied power with which they are intended to be used. 81 FR 64580, 64593 (Sept. 20, 2016).

Consistent with the December 2015 DPPP Working Group recommendations, in the September 2016 DPPP test procedure NOPR, DOE also proposed definitions for rigid-electric and storable-electric spa pumps as a variety of dedicated-purpose pool pump in this test procedure final rule, but DOE did not propose test procedures or reporting requirements for them.

In the September 2016 DPPP test procedure NOPR, DOE also specifically proposed to exclude submersible pumps from the scope of the DPPP test procedure and proposed defining a “submersible pump” as a pump that is designed to be operated with the motor and bare pump fully submerged in the pumped liquid. 81 FR 64580, 64594 (Sept. 20, 2016).

In written comments, CEC expressed support of DOE’s proposal to set the scope of the test procedure rulemaking to include self-priming and non-self-priming pool filter pumps, waterfall pool pumps, and pressure cleaner booster pumps. (CEC, No. 7 at p. 2) DOE appreciates CEC’s support.

In response to DOE’s proposal regarding the applicability of the proposed test procedure to dedicated-purpose pool pumps served by both single- and three-phase power, Hayward and APSP requested clarification as to the scope of the rule and specifically if it included three-phase dedicated-purpose pool pumps. (Hayward, No. 6 at p. 4; APSP, No. 8 at p. 5) Nidec supported the DPPP Working Group’s recommendation that any potential energy conservation standards would only apply to dedicated-purpose pool pumps served by single-phase power. However, Nidec recommended that the test procedure and reporting requirements only apply to dedicated-purpose pool pumps served by single-phase power. Nidec stated that three-

single-phase power and those served by three-phase power.

<sup>17</sup> See section III.G.1 for a discussion of determination of rated hydraulic horsepower.

<sup>18</sup> The Working Group recommended that the scope of standards for self-priming pool filter pumps only apply to self-priming pool filter pumps served by single-phase power, while the recommended test procedure and reporting requirements would still be applicable to all self-priming pool filter pumps—both those served by

phase motors used with dedicated-purpose pool pumps are very energy efficient and are already regulated. Nidec suggested that three-phase dedicated-purpose pool pumps and related motors should not need further testing nor reporting requirements. (Nidec, No. 10 at p. 3)

In response to Hayward and APSP's request for clarification, DOE clarifies that, as noted previously and discussed in the September 2016 DPPP test procedure NOPR, DOE's proposed test procedure would apply to self-priming pool filter pumps and non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower, as well as waterfall pumps and pressure cleaner booster pumps, served by both single-phase power or three-phase power. In response to Nidec's comments regarding the applicability of the proposed DOE test procedure to three-phase equipment, DOE believes that the applicability of the DPPP test procedure proposed in the September 2016 DPPP test procedure NOPR is consistent with the intent of the DPPP Working Group exhibited in the June 2016 DPPP Working Group recommendations, where the Working Group recommended that the test procedure and reporting requirements would be applicable to all self-priming pool filter pumps served by single- and three-phase power. (Docket No. EERE-2015-BT-STD-0008, No. 82, Recommendation #3 at p. 2) Although the June 2016 DPPP Working Group recommendations reference only self-priming pool filter pumps, there is no reason why DOE's proposed DPPP test procedure would not be applicable to other varieties of dedicated-purpose pool pumps served by single- or three-phase power. In addition, the DPPP Working Group did not recommend restricting the scope of standards for any of the other DPPP varieties based on the phase of power with which it is intended to be used. However, DOE agrees with Nidec that three-phase motors may already be regulated under existing DOE test procedures and energy conservation standards for electric motors and small electric motors. As discussed further in section III.G.1.b, in this final rule, DOE is limiting the test methods for motor horsepower metrics (*i.e.*, DPPP nominal motor horsepower, DPPP service factor, and DPPP motor total horsepower) to single-phase motors because testing and rating of three-phase motors is already regulated by DOE.

DOE agrees that, as stated by Nidec, the applicability of the DPPP test procedure and standards recommended by the DPPP Working Group differ slightly with respect to dedicated-

purpose pool pumps that are supplied by single-phase versus three-phase power. Specifically, the DPPP Working Group recommended that the scope of standards for self-priming pool filter pumps only apply to self-priming pool filter pumps served by single-phase power, while the recommended test procedure and reporting requirements would still be applicable to all self-priming pool filter pumps—both those served by single-phase power and those served by three-phase power. (Docket No. EERE-2015-BT-STD-0008, No. 82 Recommendations #3 at p. 2)

In response to the scope of test procedure and metric applicability proposed by DOE in the September 2016 DPPP test procedure NOPR, Pentair and APSP commented that some form of differentiation or exclusion should be established for dedicated-purpose pool pumps with nominal motor horsepower greater than 3 hp. Pentair suggested that the metric, as proposed in the NOPR, potentially limits a manufacturer's ability to develop an optimal solution for these lower head hydraulic systems, because these pumps are typically applied to pools with larger plumbing and do not typically operate on curve C. Pentair claimed that as a result, these larger pumps will be eliminated from the market. (Pentair, No. 11, at p. 2; APSP, No. 8 at pp. 3–4)

As discussed previously in this section, the DPPP Working Group, of which Pentair was a member, recommended that the scope of the test procedure be limited to self- and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendations #1, #2A, and #2B at pp. 1–2; Recommendation #6 at p. 5) In the December 2015 DPPP Working Group recommendations, the DPPP Working Group discussed and ultimately recommended not considering a test procedure or standards for self-priming and non-self-priming pool filter pumps with a rated hydraulic horsepower greater than 2.5 hp. (Docket No. EERE-2015-BT-STD-0008, No. 79 at pp. 33–54) However, the DPPP Working Group did not recommend any other test procedure differentiation or exclusions based on nominal motor horsepower, nor did the DPPP Working Group ask DOE to pursue such action. Therefore, the test procedure and standards recommended by the DPPP Working Group were intended to be applicable to self-priming and non-self-priming pool filter pumps with rated hydraulic horsepower less than or equal to 2.5 hp, which include some pool filter pumps with a nominal motor horsepower

greater than 3 hp,<sup>19</sup> which are typically installed into applications with larger plumbing, for which the test procedure would not be representative. (Docket No. EERE-2015-BT-STD-0008, No. 94 at pp. 38–53; Docket No. EERE-2015-BT-STD-0008, No. 95 at pp. 176–194; Docket No. EERE-2015-BT-STD-0008, No. 79 at pp. 39–40, 47–48) In response to Pentair and APSP, DOE notes that Pentair and APSP did not introduce any new data indicating that the cutoff should actually be a nominal motor horsepower of 3 hp; rather they simply indicated this was due to larger plumbing systems not on curve C, which the Working Group already considered in making its cutoff selection. Finally, the introduction of an exclusion for pumps with greater than 3 nominal motor horsepower opens a significant circumvention loophole risk. For example, manufacturers of pumps with 3 nominal motor horsepower could decide to slightly increase the capacity of the motor (with no change to the bare pump), in order to avoid being subject to the test procedure and energy conservation standards. Such a change on nominal horsepower would have little impact on the utility or production cost of such a pump. Alternatively, any change to a pump's hydraulic horsepower rating will directly impact end-user utility (*i.e.*, flow and head). Consequently, DOE reaffirms its conclusion that hydraulic horsepower, rather than motor horsepower, should be used to define the upper scope limit, as hydraulic horsepower is more directly tied to end-user utility (*i.e.*, flow and head) than motor horsepower. For these reasons, DOE is not adopting an alternative scope limitation in this final rule.

DOE did not receive any other comments regarding the definition of submersible pump, or the general scope of applicability of the September 2016 DPPP test procedure NOPR. Consequently, in this final rule, DOE is adopting test methods for all self-priming pool filter pumps and non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower, as well as waterfall pumps and pressure cleaner booster pumps, including pumps served by both single- and three-phase power, with the exclusion of submersible pumps. The specific test methods for each of the applicable DPPP varieties are discussed in more detail in section III.D.

<sup>19</sup> Nominal motor horsepower is approximately equivalent to the rated hydraulic horsepower divided by the pump efficiency and the motor efficiency of the dedicated-purpose pool pump.

## 7. Definitions Related to Dedicated-Purpose Pool Pump Speed Configurations and Controls

In addition to definitions of dedicated-purpose pool pump and the specific DPPP varieties, DOE also proposed in the September 2016 DPPP test procedure NOPR to establish definitions to further differentiate certain varieties of dedicated-purpose pool pumps, based on the speed configuration of the motor and/or the presence of controls on the DPPP model as distributed in commerce. These definitions are discussed in section III.B.7.a. For dedicated-purpose pool pumps distributed in commerce with applicable pool pump controls, DOE also proposed a definition for “freeze protection controls.” This is discussed in section III.B.7.b.

### a. DPPP Speed Configurations

In the June 2016 DPPP Working Group recommendations, the DPPP Working Group recommended definitions for the following DPPP speed configurations: Single-speed, two-speed, multi-speed, and variable-speed. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5A at p. 3) In the September 2016 DPPP test procedure NOPR, DOE proposed adopting the DPPP Working Group’s recommended definitions with a few minor modifications for clarity and consistency. 81 FR 64580, 64594–97 (Sept. 20, 2016). Specifically, DOE proposed the following definitions for single-speed, two-speed, multi-speed,

and variable-speed dedicated-purpose pool pump:

- *Single-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at only one speed.

- *Two-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at only two different pre-determined operating speeds, where the low operating speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce either: (1) With a pool pump control (*i.e.*, variable speed drive and user interface or switch) that is capable of changing the speed in response to user preferences; or (2) Without a pool pump control that has the capability to change speed in response to user preferences, but without which the pump is unable to operate without the presence of such a pool pump control.

- *Multi-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at more than two discrete pre-determined operating speeds separated by speed increments greater than 100 rpm, where the lowest speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce with an on-board pool pump control (*i.e.*, variable speed drive and user interface or programmable switch) that changes the speed in response to pre-programmed user preferences and allows the user to

select the duration of each speed and/or the on/off times.

- *Variable-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at a variety of user-determined speeds, where all the speeds are separated by at most 100 rpm increments over the operating range and the lowest operating speed is less than or equal to one-third of the maximum operating speed and greater than zero. Such a pump must include a variable speed drive and be distributed in commerce either: (1) With a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times; or (2) without a user interface but be unable to operate without the presence of a user interface.

81 FR 64580, 64647–48 (Sept. 20, 2016).

DOE’s proposed definitions enable each speed configuration to be identified based on (1) the number of operating speeds available to the pump; (2) the minimum operating speed, or turn-down ratio,<sup>20</sup> of the pump; (3) the pump’s ability to connect to a pool pump control; and/or (4) the characteristics of that pool pump control. The pool pump control operating characteristics, and requirements regarding the inclusion of pool pump controls applicable to each DPPP speed configuration, as proposed in the September 2016 DPPP test procedure NOPR, are summarized in Table III.2.

TABLE III.2—SUMMARY OF APPLICABLE POOL PUMP CONTROL VARIETIES AND RELATED PROPOSED REQUIREMENTS FOR EACH DPPP SPEED CONFIGURATION

DPPP speed configuration definition	Applicable pool pump control varieties	Pool pump control must be pre-programmable	Inclusion of pool pump controls as distributed in commerce
Two-Speed .....	<ul style="list-style-type: none"> <li>• Variable speed drive and user interface or</li> <li>• Switch</li> </ul>	No .....	Included.
Multi-Speed .....	<ul style="list-style-type: none"> <li>• Variable speed drive and user interface or</li> <li>• Switch</li> </ul>	Yes .....	Included and on-board.
Variable-Speed .....	<ul style="list-style-type: none"> <li>• Variable speed drive and user interface</li> </ul>	Yes .....	Included or DPPP model cannot operate without being installed with such controls.

CEC, in written comments, supported DOE’s proposal to establish definitions for single-speed, two-speed, multi-speed, and variable speed pool filter pumps. (CEC, No. 7 at p. 2) DOE appreciates the support of CEC.

In response to DOE’s proposed definitions for two-speed dedicated-purpose pool pump, Hayward suggested a modification to the definitional requirement that two-speed dedicated-purpose pool pumps not be able to operate at high speed without the

requisite control, instead of not able to operate at all. That is, instead of being unable to operate entirely, two-speed dedicated-purpose pool pumps could be allowed to function at a default low-speed if they are operated without an appropriate pool pump control.

<sup>20</sup> The turn-down ratio for multi-speed pumps, including two-speed pumps, describes the ability of

the pump to decrease speed relative to the maximum operating speed and is calculated as the

maximum operating speed over the minimum operating speed of the pump.

(Hayward, Public Meeting Transcript, No. 3 at pp. 21, 26–27) In response to Hayward's suggestion, CA IOUs stated their support for DOE's originally proposed provision that does not allow a two-speed dedicated-purpose pool pump be considered a two-speed pump unless it is unable to operate without an appropriate pool pump control. (CA IOUs, Public Meeting Transcript, No. 3 at p. 26–27)

In response to Hayward's suggestion regarding the definition of two-speed dedicated-purpose pool pump, DOE agrees with CA IOUs that the proposed modification is not consistent with the recommendations of the DPPP Working Group. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #5A at p. 3) The specific wording of the DPPP speed configuration definitions were discussed at length and in significant detail during the DPPP Working Group negotiations and, if fact, were part of the final negotiation of standard levels. (Docket No. EERE–2015–BT–STD–0008, No. 91 at pp. 141–183; Docket No. EERE–2015–BT–STD–0008, No. 92 at pp. 215–222) Specifically, certain members of the DPPP Working Group voiced concern that if two-speed dedicated-purpose pool pumps were distributed in commerce without any form of control and were capable of being operated without such a control, there would be a significant risk that such pumps would not be paired with an applicable pool pump control in the field and would not achieve the performance and potential energy savings represented by the WEF metric. (Docket No. EERE–2015–BT–STD–0008, No. 91 at pp. 141–183) DOE believes that if a two-speed dedicated-purpose pool pump is capable of operating, even at low speed, without an applicable pool pump control, this significantly increases the risk that two-speed pool filter pumps would be installed and operated without an appropriate control. As the two-speed dedicated-purpose pool pump test points presume a low flow and high flow test point, the two-speed dedicated-purpose pool pump test procedure is only appropriate and representative of two-speed dedicated-purpose pool pumps with controls that enable operation at both speeds. Therefore, to ensure that the test points and resultant WEF metric for two-speed dedicated-purpose pool pumps is representative of actual performance of the equipment in the field, DOE is adopting the definition for two-speed dedicated-purpose pool pump proposed in the September 2016 DPPP test procedure NOPR. Furthermore, DOE

notes that the two-speed dedicated-purpose pool pump definition does not restrict DPPP manufacturers from producing a pump that has two operating speeds and can only be operated at low speed without an appropriate control, as described by Hayward. However, in such a case the pump would not meet the definition of two-speed dedicated-purpose pool pump and, therefore, would be tested and subject to standards based on the single-speed dedicated-purpose pool pump test points. See section D.1 for more discussion regarding the specific test points for the different DPPP speed configurations.

In response to DOE's definition of a two-speed dedicated-purpose pool pump, Hayward and APSP also requested clarification regarding the meaning of the phrase “unable to operate.” (Hayward, No. 6 at pp. 2; APSP, No. 8 at p. 3) DOE clarifies that the phrase “unable to operate” means that the pump is non-operational and could not be used to circulate water in a pool. That is, the pump is unable to provide any flow or head, and consumes no energy.

Hayward and APSP also requested a better definition of the term “pool pump control.” Hayward and APSP both commented that the two-speed dedicated-purpose pool pump definition includes a parenthetical “(i.e., variable speed drive and user interface or switch)” that implies the only two options for a pool pump control are a switch or a variable speed drive and user interface. (Hayward, No. 6 at pp. 2; APSP, No. 8 at p. 3)

DOE recognizes that the use of the abbreviation “i.e.”<sup>21</sup> was used in error, and may have caused confusion. DOE's intent was to use the abbreviation “e.g.”<sup>22</sup> which would signify that a variable speed drive and a user interface or switch were just two examples of possible technologies. That said, the phrase “pool pump control” is not explicitly defined in this final rule and a pool pump control is not limited to the two options used as examples. DOE interprets the phrase “pool pump control” as a general term that encompasses any technology that is capable of changing the speed in response to user preferences. To clarify DOE's original intent, DOE has modified the definition of two-speed dedicated-purpose pool pump to replace “i.e.” with “e.g.”

<sup>21</sup> Latin for “id est.” Meaning “that is.” <http://www.merriam-webster.com/dictionary/i.e.>

<sup>22</sup> Latin for “exempli gratia.” Meaning “for example.” <http://www.merriam-webster.com/dictionary/e.g.>

Similarly, Davey commented that the proposed definition for variable-speed dedicated purpose pool pumps may hinder innovation of pump products that do not require additional controllers. For example, Davey suggested that a dedicated-purpose pool pump, with no pool pump control, but which enables the user to set a duration of operation at high speed and then default to low speed operation might improve efficiency. Davey also noted that, under the proposed definition of variable-speed dedicated-purpose pool pump, a user could program the pump to run at the highest speed all the time. (Davey, No. 5 at pp. 2–3)

DOE notes that Davey's comment describes a configuration where a pump is capable of operating at a high speed and a low speed and is capable of programming the duration of each speed in response to user preferences. Such a configuration would meet the proposed definition of a two-speed dedicated-purpose pool pump. As described above, DOE proposed that a two-speed dedicated-purpose pool pump be defined as a dedicated-purpose pool pump that is capable of operating at only two different, pre-determined operating speeds, where the low operating speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce either: (1) With a pool pump control (i.e., variable speed drive and user interface or switch) that sets the speed in response to user preferences or (2) without a pool pump control that has such capability but is unable to operate without the presence of such a pool pump control. 81 FR 64580, 64594 (Sept. 20, 2016). As noted previously, DOE, in this final rule, is altering the definition to refer to the variable speed drive and user interface or switch as illustrative examples with the term “e.g.” and any pool pump control capable of operating in the manner described in the definition would meet DOE's definition of two-speed dedicated-purpose pool pump, regardless of the control's technology.

The DPPP Working Group discussed the definition of variable-speed dedicated-purpose pool filter pumps, and took care to craft a definition that is sufficiently broad so as to not restrict innovation. Working Group members agreed that the definition should not specify whether the pool pump controller is attached to or detached from the motor, and the definition should not specify whether the control is sold with the pump or sold separately from the pump. (Docket No. EERE–2015–BT–STD–008, No. 91 at pp. 164–166) Based on recommendations from

the DPPP Working Group, DOE proposed that a variable-speed drive be defined as equipment capable of varying the speed of the motor. 81 FR 64580, 64596 (Sept. 20, 2016) This definition is very broad, and it only limits the available technologies to the extent that is required to describe the utility inherent in a variable-speed dedicated purpose pool pump. Similarly, the September 2016 DPPP test procedure NOPR implicitly defines a user interface as a device that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times. 81 FR 64580, 64595 (Sept. 20, 2016) This definition is also broad, and is only limited to the extent necessary to capture the required functionality of variable-speed dedicated-purpose pool pumps. Based on these points, DOE believes that the definition of a variable-speed dedicated-purpose pool filter pump is sufficiently broad to allow a range of technologies and innovative approaches, while ensuring that any such technologies would still provide the utility of a variable-speed dedicated-purpose pool pump consistent with the intent of the DPPP Working Group.

DOE understands that equipment covered by standards change as manufacturers add new features to their products and update their designs. DOE will monitor the DPPP market for changes in equipment and technology. In the future, DOE may amend the definitions of any of DPPP varieties or speed configurations, or include new varieties of dedicated-purpose pool pumps, if necessary. In the meantime, manufacturers may apply for a test procedure waiver if they develop a pump that meets the intent of the variable-speed DPPP definition but does not meet all of the definition's criteria. In general, any interested party may submit a petition for a test procedure waiver for a basic model of a covered product if the basic model's design prevents it from being tested according to the test procedures or cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Additional details on the petition for waiver process are available at 10 CFR 431.401 and at <http://energy.gov/eere/buildings/test-procedure-waivers>.

In addition, in reviewing the proposed definitions, DOE also noticed that the proposed definition for two-speed dedicated-purpose pool pump was grammatically incorrect. In this

final rule, DOE is correcting the grammatical error, which does not affect the intent or substance of the definition. Specifically, the proposed definition contained the final clause "but without which the pump is unable to operate without the presence of such a pool pump control," which this final rule adopts as modified to read "but is unable to operate without the presence of such a pool pump control" in this final rule.

Similarly, in reviewing the variable-speed DPPP definition, DOE noticed that the last phrase refers generically to a "user interface" when it is intended to refer to a user interface with specific characteristics and capabilities, as referenced in the previous clause in the definition. Therefore, in this final rule, DOE is modifying the definition to clarify that the definition is, in all places, referring to a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times. This ensures that the two clauses in the definition are mutually exclusive. DOE is also updated the terminology in the second clause to be grammatically correct, consistent with the definition of two-speed dedicated-purpose pool pump. That is, DOE adopts a definition with the final clause in the definition to read "without a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times, but is unable to operate without the presence of a user interface."

In addition to proposing definitions of the various DPPP speed configurations, in the September 2016 DPPP test procedure NOPR, DOE proposed to define variable-speed drive to mean equipment capable of varying the speed of the motor. 81 FR 64580, 64594–64597 (Sept. 20, 2016). This definition was intended to clarify and support the proposed definitions for two-speed, multi-speed, and variable-speed dedicated-purpose pool pump.

DOE received no comments regarding the proposed definition of variable-speed drive. Therefore, DOE is adopting the definition for variable speed drive as proposed in the September 2016 DPPP test procedure NOPR.

#### b. Freeze Protection Controls

DPPP Working Group recommended additional prescriptive requirements for dedicated-purpose pool pumps distributed in commerce with "freeze protection controls." (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4). Freeze

protection controls are controls that, at a certain ambient temperature, turn on the dedicated-purpose pool pump to circulate water for a period of time to prevent the pool and water in plumbing from freezing. These prescriptive freeze control requirements are discussed in section III.H.

To identify dedicated-purpose pool pumps with freeze protection controls, DOE proposed in the September 2016 DPPP test procedure NOPR to define freeze protection controls as pool pump controls that, at a certain ambient temperature, turn on the dedicated-purpose pool pump to circulate water for a period of time to prevent the pool and water in plumbing from freezing. 81 FR 64580, 64597 (Sept. 20, 2016).

DOE received no comments related to the proposed definition of freeze protection controls. Therefore, DOE is adopting the definition of freeze protection controls as proposed in the September 2016 DPPP test procedure NOPR. DOE did receive comments related to the proposed test method for verifying the presence and operation of freeze protection controls, which are discussed in section III.K.3.

#### 8. Basic Model

For purposes of certification, compliance, and enforcement, DOE generally applies its energy conservation standards to "basic models" of consumer products and commercial and industrial equipment. For the purposes of applying the DPPP regulations, DOE proposed in the September 2016 DPPP test procedure NOPR to define what constitutes a "basic model" of a dedicated-purpose pool pump. 81 FR 64580, 64597 (Sept. 20, 2016). Applying this basic model concept allows manufacturers to group similar models within a basic model to minimize testing burden, while ensuring that key variables that differentiate DPPP energy performance and/or utility are maintained as separate basic models.

In the September 2016 DPPP test procedure NOPR, DOE proposed adopting only the provisions of the current pump basic model definition that are applicable to dedicated-purpose pool pumps, which includes all units of a given product or equipment type (or class thereof) manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency. 81 FR 64580, 64597 (Sept. 20, 2016). Procedurally, to apply the basic model concept to dedicated-

purpose pool pumps, DOE proposed to amend the definition of “basic model” for pumps that currently exists at 10 CFR 431.462, as established in the January 2016 general pumps test procedure final rule to also accommodate dedicated-purpose pool pumps. 81 FR 4086 (Jan. 25, 2016). The current pumps basic model definition contains several specific accommodations regarding number of stages for multistage pumps and trimmed impellers and is applicable only to those general pumps that were the subject of the January 2016 general pumps test procedure final rule. Consequently, DOE proposed amending the definition to clarify that the multistage pump and trimmed impeller provisions were only applicable to pumps subject to the test procedure established in the January 2016 general pumps test procedure final rule. 81 FR 64580, 64597 (Sept. 20, 2016).

In response to DOE’s proposed definition of basic model for dedicated-purpose pool pumps, DOE received several comments regarding how different individual models could be grouped under the basic model provisions. Waterway commented that sometimes a single individual model has identical functional characteristics to several other individual models, and asked whether such individual models may be grouped within the basic model. (Waterway, Public Meeting Transcript, No. 3 at p. 95)

In response to Waterway’s comment, as discussed in the September 2016 DPPP test procedure NOPR public meeting, models that have identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency, fall within the same basic model for the purposes of DOE certification, even if they have different unique model numbers in the manufacturer’s catalogue. In such a case, a manufacturer would just list all the unique individual model numbers to which a given basic model certification applied in the certification report submitted to DOE. (See section III.K.2 for more information on certification reporting requirements.)

Pentair expressed concern regarding using a basic model in certifying products to DOE, stating that, in the ENERGY STAR database, when models are grouped under a single certification, utilities often do not recognize models that do not appear in the main column listing the basic models. Pentair stated that this makes it necessary to list each unit separately in the ENERGY STAR database, even if the performance is

similar. (Pentair, Public Meeting Transcript, No. 3 at pp. 32–33)

In response to Pentair’s comment, DOE notes that it is at the manufacturer’s discretion to group individual models into a single basic model to reduce testing and certification burden or to test and certify each individual model as a unique basic model. Regardless of whether a manufacturer chooses to group individual models into a basic model for purposes of certification, the manufacturer would still be required to specify in its certification the individual model numbers that fall within the basic model certified, and any representations regarding an individual model made in a certification report must be consistent with representation as to that individual model made to ENERGY STAR.

Hayward inquired if the same wet end is used within a family, but the horsepower of the motor and impeller size changes, such individual models could be grouped within the same basic model. (Hayward, Public Meeting Transcript, No. 3 at pp. 31–32) Hayward and APSP also requested clarity on the verbiage of the definition as well as examples from other products. Hayward and APSP asked whether the same product but with a different name or label for specific customers would be the same “basic model.” Finally, Hayward and APSP requested elaboration on whether a single or multi-stage pump within the same performance category and WEF criteria are considered within the same basic model. (Hayward, No. 6 at p. 2; APSP, No. 8 at p. 4)

In response to Hayward and APSP’s inquiry, DOE notes that, consistent with DOE’s practice with other products and equipment, DPPP manufacturers may elect to group individual pump models that are similar, but not identical, into the same basic model to reduce testing burden, provided all representations regarding the energy use of pumps within that basic model are identical and based on the most consumptive unit. See 76 FR 12422, 12423 (March 7, 2011).<sup>23</sup> However, all individual models

<sup>23</sup> These provisions allow manufacturers to group individual models with essentially identical, but not exactly the same, energy performance characteristics into a basic model to reduce testing burden. Under DOE’s certification requirements, all the individual models within a basic model identified in a certification report as being the same basic model must have the same certified efficiency rating and use the same test data underlying the certified rating. The compliance, certification, and enforcement (CCE) final rule also establishes that the efficiency rating of a basic model must be based on the least efficient or most energy consuming individual model (*i.e.*, put another way, all individual models within a basic model must be at

represented by the same basic model must be in the same equipment class.<sup>24</sup> DOE notes that because standards recommended by the DPPP Working Group in the June 2016 DPPP Working Group recommendations and adopted by DOE in the January 2017 DPPP DFR differentiate and assign different standards to dedicated-purpose pool pumps based on their rated hydraulic horsepower, this limits the ability of manufacturers to group individual DPPP models that vary in capacity. (Docket No. EERE–2015–BT–STD–0008, Recommendation #1, No. 82 at p. 1; 82 FR 5650, 5743) DOE agrees with Hayward and APSP that a product with different names or labels that is otherwise the same could be grouped within a basic model. Examples from other products and equipment include appliances with varying finishes grouped into one basic model; refrigerators with varying door opening sides grouped into one basic model, or air conditioners of varying voltages grouped into one basic model. DOE notes that the example related to all stage versions of a multi-stage pump being required to be in the same basic model is a specific requirement for general pumps that DOE does not apply to dedicated-purpose pool pumps.

No additional comments were received pertaining to DOE’s proposal to adopt the general provisions of the general pumps basic model definition. Therefore, DOE is adopting the changes to the definition of basic model in 10 CFR 431.462, as proposed in the September 2016 DPPP test procedure NOPR.

### C. Rating Metric

Overall, the key objectives of any DPPP metric are that it (1) be objectively measurable, (2) be representative of the energy use or energy efficiency of dedicated-purpose pool pumps, (3) provide an equitable differentiation of performance among different DPPP models and technologies, (4) be able to compare the energy efficiency of a given DPPP model to a minimum standard level, and (5) provide the necessary and sufficient information for purchasers to make informed decisions regarding DPPP selection.

As described in the September 2016 DPPP test procedure NOPR, the DPPP Working Group focused on defining a performance-based metric that is similar to the energy factor (EF) metric currently used to describe DPPP

least as energy efficient as the certified rating). 76 FR at 12428–29 (March 7, 2011).

<sup>24</sup> DOE believes this is what Hayward is referring to in their comment when they refer to “performance category and WEF criteria.”



performance by many existing programs,<sup>25</sup> but that also accounts for the potential energy savings of equipment with multiple operating speeds. 81 FR 64580, 64597–64601 (Sept. 20, 2016). Ultimately, the DPPP

Working Group recommended using the WEF, which is defined as the ratio of the volumetric flow provided by the pump, divided by the input power to the pump, at one or more load points, where these load points are selected

depending on the specific DPPP variety and speed configuration, as shown in equation (1). The specific load points and weights for each DPPP variety are discussed in section III.D.

$$WEF = \frac{\sum_{i=1}^n \left( w_i \times \frac{Q_i}{1000} \times 60 \right)}{\sum_{i=1}^n \left( w_i \times \frac{P_i}{1000} \right)} \quad (1)$$

Where:

WEF = weighted energy factor in kgal/kWh;

$w_i$  = weighting factor at each load point  $i$ ;

$Q_i$  = flow at each load point  $i$  in gpm;

$P_i$  = input power to the motor (or controls, if present) at each load point  $i$  in W;

$i$  = load point(s), defined uniquely for each DPPP variety; and

$n$  = number of load point(s), defined uniquely for each speed configuration.

(Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #5 at p. 4)

DOE agrees with the DPPP Working Group that the recommended WEF metric, as shown in equation (1),

provides a representative, objective, and informative characterization of DPPP performance. Consequently, in the September 2016 DPPP test procedure NOPR, DOE proposed to adopt the WEF metric as the performance-based metric for representing the energy performance of certain styles of dedicated-purpose pool pumps.

In the September 2016 DPPP test procedure NOPR, DOE requested feedback on the proposed metric. CEC stated in written comments that CEC supported DOE's proposal to establish a

weighted energy factor metric. (CEC, No. 7 at p. 2)

APSP and Hayward commented that they believe that equation (1) in the September 2016 DPPP test procedure NOPR (81 FR 64580, 64600),<sup>26</sup> which is used to determine WEF, does not correctly result in the weighting of energy factors at the specified load points. (APSP, No. 8 at p. 4; Hayward, No. 6 at pp. 2–3) Instead, APSP and Hayward proposed using the following equation (2), with all variables as defined previously:

$$WEF = \sum_{i=1}^n w_i \left( \frac{\frac{Q_i}{1000} \times 60}{\frac{P_i}{1000}} \right) \quad (2)$$

DOE responds that equation (1), as published in the September 2016 DPPP test procedure NOPR, correctly describes the efficiency of DPPP equipment and aligns with the recommendation of the DPPP Working Group. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #5 at p. 4) DOE notes that the DPPP Working Group evaluated both methods of calculating WEF, both the proposed equation (1) and equation (2), as recommended by APSP and Hayward. (Docket No. EERE–2015–BT–STD–0008 No. 49 at pp. 6–9; Docket No. EERE–

2015–BT–STD–0008 No. 56 at pp. 24–60) The DPPP Working Group ultimately chose to use equation (1) because it is more representative of the energy savings to the customer. (Docket No. EERE–2015–STD–0008 No. 50 at p. 3) Equation (2) is a weighting of the EF values, which results in an exaggeration of the benefits of multi-speed and variable-speed technologies, while equation (1) is a ratio of the amount of water pumped over the amount of energy consumed over a given period of time in real-world applications. (Docket No. EERE–2015–BT–STD–0008 No. 56

at pp. 29, 38, 60) That is, mathematically, weighting the EF values directly, as shown in equation (2), results in a weighted average of the flow values in the numerator, but equal weighting of the denominator values, meaning the flow at high speed is given more weight than the associated power value at high speed. To illustrate this, the calculation of WEF, with both equations, for a two-speed, multi-speed, or variable-speed dedicated-purpose pool pump with both a low speed and high speed test point is shown in equation (3).

<sup>25</sup> As described in the September 2016 DPPP TP NOPR, EF is used by California Title 20, APSP, and

ENERGY STAR to describe DPPP performance. 81 FR 64580, 64598–64600 (Sept. 20, 2016).

<sup>26</sup> Equation (1) in the September 2016 DPPP TP NOPR is identical to equation (1) in this document.

$$WEF_{Eq1} = \frac{\sum_{i=1}^n \left( w_i \times \frac{Q_i}{1000} \times 60 \right)}{\sum_{i=1}^n \left( w_i \times \frac{P_i}{1000} \right)} = \frac{\left( w_{low} \times \frac{Q_{low}}{1000} \times 60 + w_{high} \times \frac{Q_{high}}{1000} \times 60 \right)}{\left( w_{low} \times \frac{P_i}{1000} + w_{high} \times \frac{P_i}{1000} \right)} \quad (3)$$

$$WEF_{Eq2} = \sum_{i=1}^n w_i \left( \frac{\frac{Q_i}{1000} \times 60}{\frac{P_i}{1000}} \right) = \left( \frac{w_{low} \times \frac{Q_{low}}{1000} \times 60}{P_{low}} \right) + \left( \frac{w_{high} \times \frac{Q_{high}}{1000} \times 60}{P_{high}} \right)$$

Conversely, equation (1) correctly accounts for the amount of power it takes to provide a given amount of flow. That is, equation (1) reflects the more realistic case where a pump provides a low flow rate for an associated amount of power during a portion of the day and a high flow rate for an associate amount of power during another portion of the day. If one were to calculate the “total daily WEF,” one would sum the flow rates throughout the day and the power consumption throughout the day and take a ratio of the two; both power and flow values would be weighted according to their proportional use during the day. Therefore, equation (1) is more representative of the energy efficiency of dedicated-purpose pool pumps over a typical cycle of use.

During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs inquired about including standby power as part of the metric for dedicated-purpose pool pumps. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 91–92) In response to CA IOUs inquiry, DOE explained that standby power was discussed during the DPPP Working Group meetings and, ultimately, the DPPP Working Group decided not to include standby power in the WEF metric due to the negligible impact any standby power measurements would have on the final WEF value. (Docket No. EERE–2015–BT–STD–0008, No. 95 at pp. 229–30) Consistent with the DPPP Working Group recommendations, DOE did not propose to include standby power measurements nor reporting in the September 2016 DPPP test procedure NOPR. While DOE appreciates that some dedicated-purpose pool pumps with controls will consume standby power in their idle state and the desire to minimize this energy consumption, DOE does not believe the additional burden associated with dedicated testing and reporting requirements would be justified. Specifically, testing of standby power for dedicated-purpose

pool pumps would require an additional test method and may require different or more specialized power measurement equipment to accurately capture the low power during standby operation. Furthermore, as the DPPP Working Group did not recommend specific requirements for standby energy consumption, such testing would only be informative and would not be necessary to determine compliance of dedicated-purpose pool pumps. DOE does not believe the additional burden associated with establishing test requirements to measure standby energy use of dedicated-purpose pool pumps is justified at this time. Therefore, in this final rule, DOE is not adopting testing or reporting requirements for standby power of dedicated-purpose pool pumps.

In addition to WEF, in the September 2016 DPPP test procedure NOPR, DOE also proposed an optional test method for EF at multiple speeds and/or system curves and to allow manufacturers and industry to continue to describe the energy performance of dedicated-purpose pool pumps using the EF metric. 81 FR 64580, 64627–64628 (Sept. 20, 2016). DOE typically only includes one primary energy metric, the DOE metric that is used for the energy conservation standards, in the test procedure to ensure standardization of efficiency representations throughout the industry and eliminates potential confusion in the market place if multiple non-equivalent metrics are used to describe the same piece of equipment. However, in this specific case, DOE departed from typical practice due to the interest expressed in the use of the EF metric during the DPPP Working Group negotiations. DOE notes that, as discussed in more detail in section III.F, representations of EF will only be allowed until July 19, 2021, the compliance date of standards for dedicated-purpose pool pumps and, if made, must be accompanied by a representation of the DOE metric, WEF.

#### *D. Test Methods for Different DPPP Categories and Configurations*

As discussed in section III.C, DOE will characterize the performance of dedicated-purpose pool pumps according to the WEF. Due to differences in equipment design and typical use profiles, the DPPP Working Group recommended that unique weights and load points be specified for each DPPP variety and pump speed configuration. Based on the recommendations of the DPPP Working Group, in the September 2016 DPPP test procedure NOPR, DOE proposed unique load points for the various speed configurations (e.g., single-speed, two-speed, multi-speed, or variable-speed dedicated-purpose pool pumps) of self-priming and non-self-priming pool filter pumps with a rated hydraulic horsepower less than 2.5 hp (section III.D.1). DOE also proposed unique load points for waterfall pumps (section 0) and pressure cleaner booster pumps (section III.D.3), each of which reference only a single load point. 81 FR 64580, 64601–64602 (Sept. 20, 2016). The load points for self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps are discussed in the subsequent sections.

##### *1. Self-Priming and Non-Self-Priming Pool Filter Pumps*

As noted in section III.B.3.a, self-priming and non-self-priming pool filter pumps have different construction characteristics and potentially different applications. However, during the Working Group meetings, the DPPP Working Group discussed how the performance of these two different varieties of pumps is comparable in most instances. (Docket No. EERE–2015–BT–STD–0008, No. 57 at pp. 329–331) Therefore, to provide comparable ratings between self-priming and non-self-priming pool filter pumps, the DPPP Working Group recommended the same reference curve, curve C, for self-

priming and non-self-priming filter pumps. (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #6 at p. 5) Consistent with the DPPP Working Group recommendations, in the September 2016 test procedure NOPR, DOE proposed that both self-priming and non-self-priming pool filter pumps be tested at specific load points along curve C. 81 FR 64580, 64602-64603 (Sept. 20, 2016).

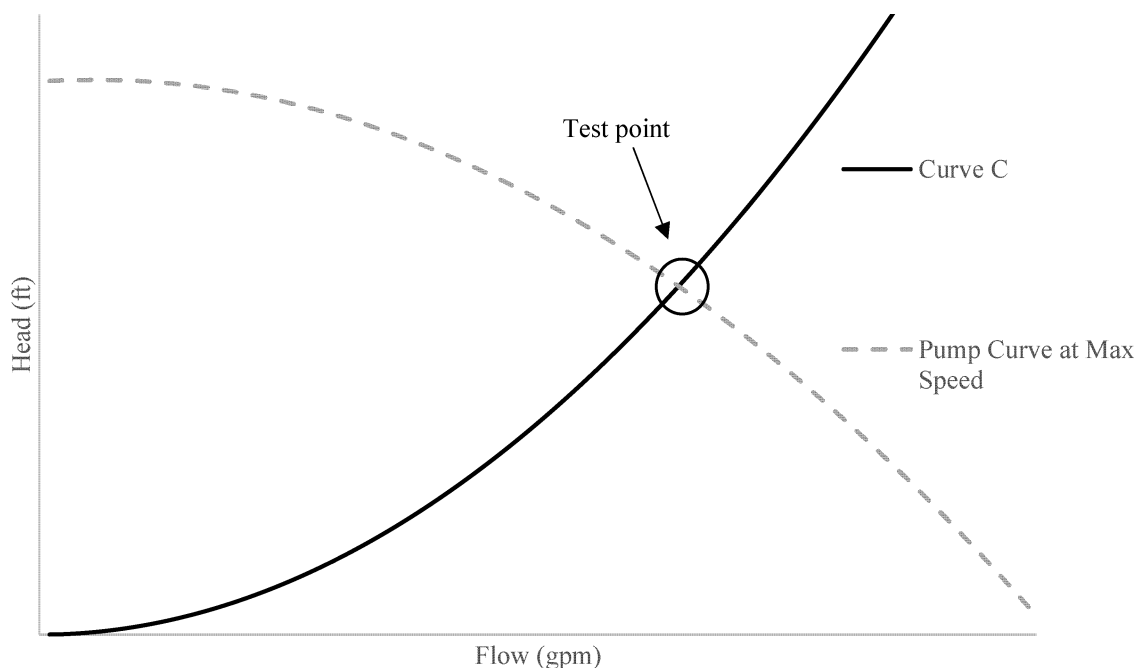
During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs did not object to the recommendation, but noted that the typical pipe size associated with these curves is a generalization and the overall plumbing system can affect the curves as much as the pump size in response to DOE's assertion that curve

C was representative of 2.5-inch plumbing. (CA IOUs, Public Meeting Transcript, No. 3 at p. 37) In response to CA IOUs observation, DOE agrees with CA IOUs that many factors may impact system head. DOE was simply referring to the fact that curve C was initially developed to be representative of 2.5-inch plumbing,<sup>27</sup> as is acknowledged in section 4.1.2.1.3 of ANSI/APSP/ICC-15a-2013.

Beyond the proposed system curve, DOE also proposed specific load points for each variety of self-priming and non-self-priming pool filter pump. The specific load points for single-speed, two-speed, multi-speed, and variable-speed pool filter pumps are discussed in sections III.D.1.a, III.D.1.b, and III.D.1.c, respectively.

#### a. Single-Speed Pool Filter Pumps

Single-speed pool filter pumps, by definition and design, are only capable of operating at one speed. In the September 2016 DPPP test procedure NOPR, consistent with the DPPP Working Group recommendations (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #6 at p. 5), DOE proposed testing single-speed pool filter pumps at the pump's maximum speed of rotation on curve C. 81 FR 64580, 64603 (Sept. 20, 2016). That is, the load point for single-speed pool filter pumps would be specified as the point of intersection between the pump's performance curve at its maximum speed (which is its only speed) and the system curve C, as shown in Figure III.1. *Id.*



**Figure III.1 Specified Load Point on Curve C at Maximum Speed for Single-Speed Self-Priming and Non-Self-Priming Pool Filter Pumps.**

CEC, in written comments, supported DOE's proposal to establish a load point for single-speed filter pumps. (CEC, No. 7 at p. 2) DOE received no other comments related to the proposal to test single-speed pool filter pumps at a single load point based on the maximum speed on curve C. Therefore, DOE is adopting in this final rule the proposed single load point for single-speed pool filter pumps.

#### b. Two-Speed Pool Filter Pumps

Two-speed pumps, by definition and design, are capable of operating at two discrete speeds. In two-speed pool filter pumps, the low speed setting is designed to handle filtration and provide an adequate turnover-rate, while the high speed setting operation is designed to be used intermittently for short duration periods to operate suction-side pool cleaners and ensure

proper mixing of the water. Consistent with typical two-speed pool filter pump design and the requirements of existing regulatory programs, the DPPP Working Group recommended testing two-speed pool filter pumps (1) at the load point corresponding to the pump's maximum speed of rotation on curve C and (2) at the load point corresponding to half of the maximum-speed flow rate with total dynamic head at or above curve C.

<sup>27</sup> PG&E developed curves A, B, and C based data from an exercise by ADM Associates, Inc. in 2002, *EVALUATION OF YEAR 2001 SUMMER INITIATIVES POOL PUMP PROGRAM* and contractor input. However, the actual data for the

curves are not contained in the ADM report (the ADM report can be found at [www.calmac.org/publications/SI\\_Pool\\_Pump.pdf](http://www.calmac.org/publications/SI_Pool_Pump.pdf); Last accessed April 4, 2016). Curves A and B are first formally mentioned in a subsequent report by PG&E in *Codes*

*and Standards Enhancement Initiative for FY 2004*. However, this report does not discuss the derivation of the curves. ([http://consensus.fsu.edu/FBC/Pool-Efficiency/CASE\\_Pool\\_Pump.pdf](http://consensus.fsu.edu/FBC/Pool-Efficiency/CASE_Pool_Pump.pdf); Last accessed April 29, 2016).

(Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6, at p. 5) However, in the September 2016 DPPP test procedure NOPR, DOE proposed load points that were slightly modified from those recommended by the DPPP Working Group. Specifically, DOE proposed the following two load points for two-speed pool filter pumps: (1) A high flow point at the maximum speed on curve C and (2) a low flow point at the low-speed setting on curve C. 81 FR 64580, 64604–64606 (Sept. 20, 2016). As explained in the September 2016 DPPP test procedure NOPR, the load points recommended by the DPPP Working Group are only possible for pumps with the low-speed setting equivalent to one-half of the rotating speed of the maximum speed setting. DOE proposed the modification because DOE believed the DPPP Working Group recommendation, as written, would not provide equitable or representative ratings for any two-speed pool filter pumps with a low speed that was less than one-half the maximum speed setting. *Id.*

DOE also proposed certain criteria for the low flow point to prevent manufacturers from producing pumps with unrepresentatively high (*i.e.*, advantageous) WEF scores by designing pumps with an extremely low speed setting. *Id.* Specifically, DOE proposed minimum flow rates for two-speed pumps of 24.7 gpm for two-speed pool filter pumps that have a rated hydraulic horsepower less than or equal to 0.75 hp (small pool filter pumps) and 31.1 gpm for two-speed pool filter pumps that have a rated hydraulic horsepower greater than 0.75 (large pool filter pumps). DOE's proposed minimum flow rates are consistent with the DPPP Working Group's recommended low flow rates for multi-speed and variable-speed pool filter pumps. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6 at p. 5); 81 FR 64580, 64604–06 (Sept. 20, 2016). The DPPP Working Group developed these

low flow rates based on the minimum effective flow rates for typical pool sizes. DOE believes these flow rates are also representative of minimum flow rates for two-speed pool filter pumps and they will effectively prevent the inclusion of unreasonably low speeds on two-speed pool filter pumps for the sole purpose of inflating WEF ratings. 81 FR 64580, 64604–06 (Sept. 20, 2016).

DOE believes that the proposed load points for two-speed pool filter pumps are representative of typical pool filter pump operation and energy performance, and the load points characterize the efficiency of the pump speeds and flow points in typical applications (*i.e.*, cleaning/mixing and filtration). In addition, DOE believes that the proposal is consistent with the intent of the DPPP Working Group.

During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs confirmed that two-speed pool filter pumps with low speed below one-half of maximum speed are a reasonable scenario and supported DOE's proposed load points to address this scenario. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 39–41) ASAP, NRDC, and CEC, in written comments, supported DOE's proposal to establish load points for two-speed pool filter pumps and did not articulate any different suggestions to the proposed test procedure. (ASAP and NRDC, No. 12 at p. 2; CEC, No. 7 at p. 2) ASAP and NRDC also commented that proposed load points would provide consistent and comparable ratings among two-speed filter pumps. (ASAP and NRDC, No. 12 at p. 2)

DOE appreciates the support of CA IOUs, ASAP, NRDC, and CEC. DOE received no other comments related to the proposed test procedure for two-speed pool filter pumps. Therefore, DOE is adopting in this final rule the proposed load points at low and high speed for two-speed pool filter pumps, as well as the minimum flow rate thresholds of 24.7 gpm for two-speed pool filter pumps that have a hydraulic output power less than or equal to 0.75

hp (small pool filter pumps) and a low flow rate of 31.1 gpm for two-speed pool filter pumps that have a hydraulic output power greater than 0.75 and less than 2.5 hp (large pool filter pumps).

#### c. Variable-Speed and Multi-Speed Pool Filter Pumps

In accordance with the DPPP Working Group recommendations, in the September 2016 DPPP test procedure NOPR, DOE proposed different definitions for variable-speed and multi-speed pool filter pumps (see section III.B.7.a), but proposed the same test procedure be applied to both speed configurations. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6, at p. 5); 81 FR 64580, 64606–64610 (Sept. 20, 2016). For variable- and multi-speed pool filter pumps, DOE proposed two load points that are generally representative of a high-speed mixing/cleaning flow rate and a low-speed filtration flow rate, similar to two-speed pool filter pumps (as discussed in section III.D.1.b). However, the high-speed and low-speed load points for variable- and multi-speed equipment are specified in a slightly different manner than for two-speed equipment. 81 FR 64580, 64606–64610 (Sept. 20, 2016).

As DOE discussed in the September 2016 DPPP test procedure NOPR, the DPPP Working Group recommended (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6 at p. 5), and DOE subsequently proposed, testing multi- and variable-speed pool filter pumps at two load points. These points are (1) a high-flow load point that is achieved by running the pump at 80 percent of flow rate at maximum speed on or above curve C and (2) a low-flow load point that is representative of a specific, typical filtration flow rate, as opposed to a specific speed setting or relative reduction from maximum speed (also on or above curve C), as summarized in Table III.3. 81 FR 64580, 64606–64610 (Sept. 20, 2016).

TABLE III.3—VARIABLE- AND MULTI-SPEED LOAD POINTS RECOMMENDED BY DPPP WORKING GROUP AND PROPOSED BY DOE IN SEPTEMBER 2016 DPPP TEST PROCEDURE NOPR

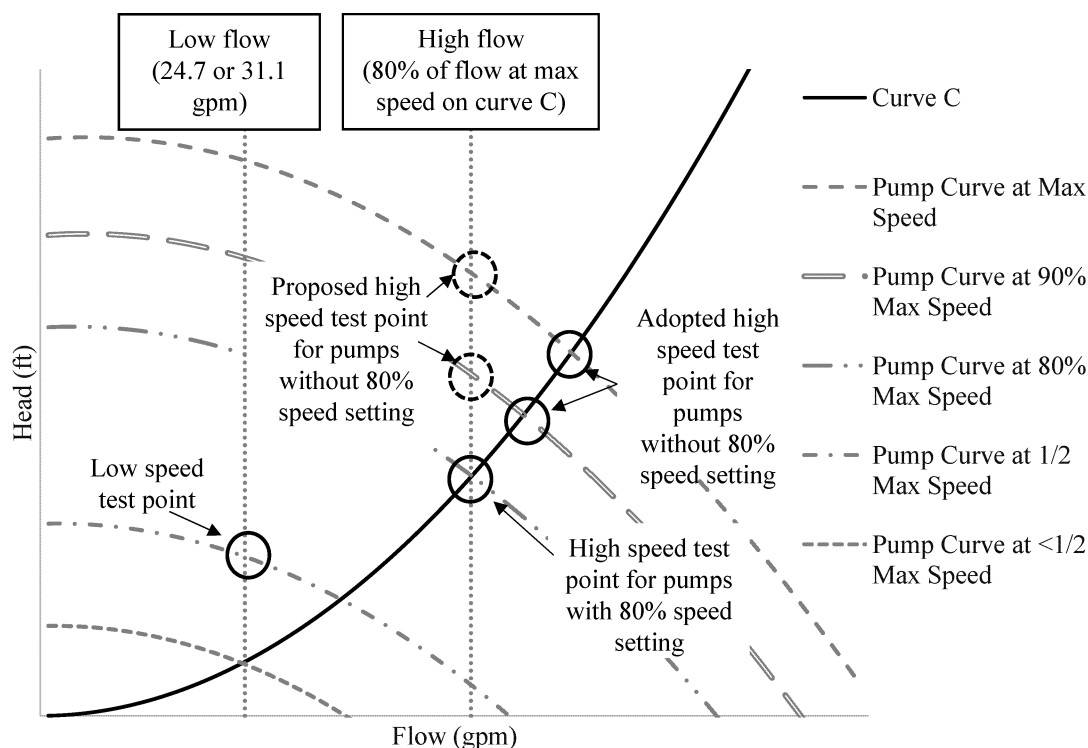
Load point	Flow rate (gpm)	Head (ft)	Speed (rpm)
High Speed .....	$Q_{\text{high}} \text{ (gpm)} = 0.8 \times Q_{\text{max\_speed@C}}^*$	$H \geq 0.0082 \times Q_{\text{high}}^2$	Lowest available speed for which the pump can achieve the specified flow rate (a pump may vary speed to achieve this load point).
Low Speed .....	$Q_{\text{low}} \text{ (gpm)} =$ <ul style="list-style-type: none"> <li>If pump hydraulic hp at max speed on curve C is &gt;0.75, then <math>Q_{\text{low}} = 31.1 \text{ gpm}</math></li> <li>If pump hydraulic hp at max speed on curve C is ≤0.75, then <math>Q_{\text{low}} = 24.7 \text{ gpm}</math></li> </ul>	$H \geq 0.0082 \times Q_{\text{low}}^2$	

\*  $Q_{\text{max\_speed@C}}$  = flow at maximum speed on curve C.

The high speed load point corresponding to a flow rate of 80 percent of the flow at maximum speed on curve C was recommended by the DPPP Working Group to reflect that multi- and variable-speed pool filter pumps can be optimized to account for the oversizing that typically occurs in the field and provide a specific desired

amount of flow that may be less than the flow rate at maximum speed. *Id.* In the September 2016 DPPP test procedure NOPR, DOE discussed that, for multi-speed pumps without a speed setting at 80 percent of the maximum speed setting, the high flow point would be determined at the maximum operating speed of the pump and may not be on

curve C. 81 FR 64580, 64607 (Sept. 20, 2016). Such a pump would need to be tested at a speed setting higher than 80 percent of maximum and throttled to a head pressure higher than curve C to achieve a flow rate of 80 percent of the flow rate at maximum flow on curve C, as shown in Figure III.2.



**Figure III.2 Specified Load Points on Curve C at Maximum Speed for Multi-Speed and Variable-Speed Self-Priming and Non-Self-Priming Pool Filter Pumps.**

To specify the low flow points for multi-speed and variable-speed pool filter pumps, the DPPP Working Group developed specific, discrete flow rates that are representative of the typical flow rates observed in the field. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6 at p. 5) That is, as discussed in the September 2016 DPPP test procedure NOPR, the DPPP Working Group recommended that “small pool filter pumps” with rated hydraulic horsepower values of less than or equal 0.75 would be assigned a flow rate of 24.7 gpm, which is representative of the flow rate necessary for filtration in smaller pools. The DPPP Working Group also recommended that “large pool filter pumps” with rated hydraulic horsepower values greater than 0.75 and less than or equal to 2.5 would be assigned a flow rate of 31.1 gpm, which is representative of the flow rate necessary for filtration in large

pools. The selected low flow rates for small and large multi-speed and variable-speed pool filter pumps are intended to be representative of the applications such pumps would typically serve. The methodology for developing the specific flow rates for small and large multi-speed and variable-speed pool filter pumps is discussed at length in the September 2016 DPPP test procedure NOPR. 81 FR 64580, 64606–64610 (Sept. 20, 2016).

DOE’s proposal for the high flow and low flow points for multi-speed and variable-speed pumps does not explicitly specify the speed at which the pump operates at the high or low flow points. Instead, DOE determined that the low and high flow rates would be achieved at the lowest available speed while operating on or above curve C to accommodate multi-speed pumps that may not be capable of operating at the exact speed that allows the pump to

achieve the required flow rate exactly on curve C. For such a pump, DOE established that the pump be tested at the lowest available speed that can meet the specified flow with a head point that is at or above curve C. *Id.*

In the September 2016 DPPP test procedure NOPR, DOE requested comment on the treatment of multi-speed pumps and the necessity to throttle multi-speed pumps on the maximum speed performance curve if appropriate lower discrete operating speeds are not available to achieve 80 percent of the flow rate at maximum speed on curve C while still maintaining head at or above curve C. 81 FR 64580, 64608 (Sept. 20, 2016).

In response, CEC supported DOE’s proposal to establish load points for multi-speed and variable-speed pool filter pumps. However, CEC did not advocate for any different values compared to DOE’s proposal. (CEC, No.

7 at p. 2). Pentair requested clarification during the September 2016 DPPP test procedure NOPR public meeting and in written comments regarding whether the high flow load point for multi-speed and variable-speed pool filter pumps was specified with respect to 80 percent flow or 80 percent speed. (Pentair, Public Meeting Transcript, No. 3 at p. 48; Pentair, No. 11 at p. 4) APSP reiterated Pentair's comments that flow and speed were used interchangeably in the September 2016 DPPP test procedure NOPR and recommended that the test procedure be standardized on a percentage of flow requirements (APSP, No. 8 at p. 2). Consistent with APSP's recommendation, in this final rule, DOE clarifies that the high flow load point for multi-speed and variable-speed pool filter pumps is specified with respect to at 80 percent of the flow rate at maximum speed on curve C.

APSP and Pentair also commented that throttling multi-speed pumps to obtain 80 percent flow moves the pump off of curve C, which is otherwise the standardized performance curve proposed by DOE in the test procedure NOPR. Pentair commented that throttling and testing off of curve C makes direct product performance comparisons impossible, and has the potential to overstate the performance of less efficient and less capable pumps. (APSP, No. 8 at pp. 4–5; Pentair, No. 11, at p. 2) Pentair similarly expressed concern over the low flow load points. Pentair agreed that 24.7 gpm and 31.1 gpm are reasonable minimum flow rates for typical swimming pool applications. However, Pentair stated that fixing the low-speed load point at one of these two values would create an unfair bias against higher capacity pumps that are designed for high-flow, low-head systems. (Pentair, No. 11 at p. 2) At the test procedure NOPR public meeting, Pentair suggested that multi-speed pumps that cannot be tested at 80 percent of the flow rate at maximum speed on curve C be tested at their maximum speed on curve C. (Pentair, Public Meeting Transcript, No. 3 at pp. 42–43) Pentair did not provide a specific recommendation for the low flow load points.

In response to Pentair and APSP's dissatisfaction with DOE's proposal to allow throttling multi-speed pumps, DOE agrees with Pentair and APSP's concerns that throttling and testing off of curve C may result in WEF values that are not directly representative of the typical energy performance of the pump in the field, as users are unlikely to throttle pumps to compensate for oversizing. In assessing Pentair and APSP's concerns, DOE recognized that

the multi-speed pump load points specified in the December 2015 DPPP Working Group recommendations did not explicitly mention or require throttling. Specifically, for flow, the term sheet stated "same method as variable speed, but testing at closest available speed that can meet the specified flow (while at or above  $Q_{low}$  or  $Q_{high}$ , respectively)." For head, the term sheet stated: " $H \geq 0.0082 \times Q_{high}^2$ ," (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5) Allowing flow to be "at or above"  $Q_{high}$  and "at or above"  $0.0082 \times Q_{high}^2$  means that a multi-speed pump that does not have an 80 percent speed setting could test exactly on curve C with a flow rate at or above 80 percent of the flow rate at maximum speed on curve C, as suggested by Pentair, and still meet the load point requirements laid out by the DPPP Working Group in the December 2015 term sheet. *Id.*

Consequently, DOE acknowledges that its proposal in the September 2016 DPPP test procedure NOPR to require throttling of multi-speed pumps was based on one possible interpretation of the December 2015 DPPP Working Group recommendations, while Pentair's proposal to test on curve C as the lowest speed that resulted in a flow rate at or above 80 percent of the flow rate at maximum speed on curve C is based on another possible interpretation. That is, as written, the December 2015 DPPP Working Group recommendations allow multiple interpretations of the appropriate load points for multi-speed pool filter pumps. In the September 2016 DPPP test procedure NOPR, DOE proposed the test method that required fixing the flow point at 80 percent of the flow rate at maximum speed on curve C (*i.e.*,  $Q_{high} = 0.8 \times Q_{max\_speed@C}$ ) because DOE's test procedure must be precise and repeatable and, therefore, must provide additional specificity beyond that specified by the DPPP Working Group. However, DOE acknowledges that Pentair's suggestion of fixing the head value on curve C ( $H = 0.0082 \times Q_{high}^2$ ) and allowing flow rates above 80 percent of the flow rate at maximum speed on curve C is another viable method to provide the requisite additional specificity and precision in the multi-speed test method. DOE also acknowledges that, as mentioned by Pentair and APSP, that throttling off of curve C would be a departure from the standardized system curve and would result in WEF values that are less representative of the typical energy performance of such multi-speed pumps. Instead, multi-speed pumps

would more likely be operated on the standardized system curve (*i.e.*, curve C) at the lowest speed available at or above 80 percent of the flow rate at maximum speed on curve C (*i.e.*, the flow rate the DPPP Working Group believed was "required" for high flow mixing in pumps that are oversized). Therefore, in this final rule, DOE is revising the load points for multi-speed pumps to require the head value to be on curve C, as suggested by Pentair, but allow the flow value to be greater than or equal to 80 percent of the flow rate at maximum speed on curve C. As noted previously, this test method is consistent with that recommended by the DPPP Working Group.

With regard to the low flow load points, DOE responds that the DPPP Working Group recommended that the low-speed load point for variable- and multi-speed pumps be measured at either 24.7 gpm or 31.1 gpm, depending on the pump hydraulic horsepower at maximum speed on curve C. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #6 at p. 5) As discussed at length in the September 2016 DPPP test procedure NOPR, the DPPP Working Group recommended these values to allow for more comparable WEF values among pool filter pumps intended to serve the same size pools. 81 FR 64580, 64606–64610 (Sept. 20, 2016). While Pentair noted in its comments that this construct may bias higher capacity (high flow, low head) pumps, DOE notes that in general, higher capacity pumps have been excluded from the scope of this rulemaking. In addition, as discussed previously, these low flow points were chosen specifically to represent typical filtration flow rates that would be experienced in the majority of pools, regardless of the size of the pump. That is, the required filtration flow rate is dictated more by the size of the pool than the size of the pump. Converse to Pentair's observation, the ability of larger pumps to reduce their speed to achieve these low flow rates will potentially result in higher (*i.e.*, better) WEF scores than slightly small dedicated-purpose pool pumps serving the same load.

For these reasons, DOE is adopting in this final rule the low speed load points of 24.7 gpm and 31.1 gpm, as proposed, in the September 2016 DPPP TP NOPR. However, for multi-speed pumps, DOE acknowledges that the low speed may not result in a flow rate that is exactly 24.7 or 31.1 gpm while on curve C and throttling may be required to achieve the flow points proposed in the NOPR. As discussed previously, DOE agrees with Pentair and APSP that throttling

may not be representative of the performance of multi-speed dedicated-purpose pool pumps in the field. Therefore, based on the same reasoning

as the high flow point, DOE is revising the low flow point for multi-speed dedicated-purpose pool pumps to also require testing along curve C, but allow

flow rates at or above the specified values. Specifically, the adopted load points are presented in Table III.4.

TABLE III.4—MULTI-SPEED AND VARIABLE-SPEED LOAD POINTS ADOPTED IN THIS FINAL RULE

Load point	Flow rate (gpm)	Head (ft)	Speed (rpm)
High Speed Low Speed	$Q_{\text{high}} \text{ (gpm)} \geq 0.8 \times Q_{\text{max\_speed@C}}^*$ $Q_{\text{low}} \text{ (gpm)} =$ <ul style="list-style-type: none"> <li>If pump hydraulic hp at max speed on curve C is <math>&gt;0.75</math>, then <math>Q_{\text{low}} \geq 31.1</math> gpm</li> <li>If pump hydraulic hp at max speed on curve C is <math>\leq 0.75</math>, then <math>Q_{\text{low}} \geq 24.7</math> gpm</li> </ul>	$H = 0.0082 \times Q_{\text{high}}^2$ (i.e., on Curve C) $H = 0.0082 \times Q_{\text{low}}^2$ (i.e., on Curve C)	Lowest available speed for which the pump can achieve the specified head value and flow rate threshold (a pump may vary speed to achieve this load point).

\*  $Q_{\text{max\_speed@C}}$  = flow at maximum speed on curve C.

DOE believes that the load points shown in Table III.4 are consistent with the intent of the DPPP Working Group while addressing the concerns brought by Pentair and APSP for multi-speed pool filter pumps.

With regard to the variable-speed load points, DOE notes that the load points recommended by the DPPP Working Group were specified clearly as exactly equivalent to 24.7 or 31.1 gpm for the low flow load point and 80 percent of the flow rate at maximum speed on curve C for the high flow load point. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6 at p. 5) The DPPP Working Group discussed and recommended these load points based on the understanding that a variable-speed dedicated purpose pool pump would be equipped with a continuously variable control that could exactly achieve the load points specified in the test procedure or desired by a user in the field. However, DOE notes that the definition for variable-speed dedicated-purpose pool pump recommended by the DPPP Working Group and adopted by DOE references a maximum increment between available operating speeds of 100 rpm. Based on the adopted definition it is possible that a variable-speed dedicated-purpose pool pump with extremely wide speed increments (e.g., 95 rpm) will not be able to exactly achieve the flow points specified by the DPPP Working Group. DOE notes that the definition for variable-speed dedicated-purpose pool pump was not finalized by the DPPP Working Group until after the load points for variable-speed dedicated-purpose pool pump had already been established and approved. Therefore, the DPPP Working Group did not explicitly consider a scenario where a variable-speed dedicated-purpose pool pump would not be able to exactly achieve the specified flow points.

DOE believes that, similar to multi-speed pool filter pumps, it is unlikely that a user would throttle the pump in the field to achieve a specific flow rate. Instead, DOE believes it would be more representative and consistent to also require variable-speed pool filter pumps to be tested on curve C at the lowest speed that results in a flow rate at or above the flow rate specified by the DPPP Working Group, similar to the load points specified for multi-speed pool filter pumps. Therefore, DOE is adopting, in this final rule, the same load points for multi-speed and variable-speed pool filter pumps, as summarized in Table III.4.

In response to the multi-speed load points proposed in the September 2016 DPPP test procedure NOPR, Hayward commented that the proposed criteria for multi-speed pumps would severely penalize less capable multispeed pumps [without a discrete operating speed at 80 percent of flow rate at maximum speed on curve C]. (Hayward, No. 6 at p. 3) In response to Hayward's concerns regarding the penalization of multi-speed pumps, DOE acknowledges that the test procedure (both as proposed in the NOPR and as adopted in this final rule) will indeed "penalize" (i.e., generate less advantageous WEF score for) less capable multi-speed pumps that cannot exactly achieve 80 percent of the flow rate at maximum speed on curve C. This is by-design and in agreement with the recommendations of DPPP Working Group, because such pumps provide the end-user less utility and are more likely to be run at higher-speeds and consume more energy than pumps that can reach 80 percent of the flow rate at maximum speed on curve C. Furthermore, the disadvantage in WEF score is commensurate with the reduced speed capability of the pump—the closer the pump can get to the 80 percent load point (with speed reduction), the better the pump's WEF score will be. For this

reason, DOE is adopting its proposals as to the treatment of multi-speed pumps in this final rule, except as noted in this section.

Pentair raised a concern that an unintended consequence of specifying the high flow load point based on 80 percent flow was that manufacturers may start designing pool filter pumps with an 80 percent speed setting, even if it is not the best optimization for the pump for specific applications. (Pentair, Public Meeting Transcript, No. 3 at p. 46) In response, DOE acknowledges Pentair's concern, but notes that the 80 percent load point was selected by the DPPP Working Group to be representative of the amount of "right-sizing" that would be possible in typical applications. (EERE-2015-BT-STD-0008, No. 57 at pp. 388–405; CA IOUs, No. 53 at pp. 142–143; Waterway, No. 54 at p. 51) As such, DOE believes the 80 percent setting is representative of a speed setting that would reliably result in energy savings in the field for typical applications. However, DOE acknowledges that for some applications the 80 percent speed setting may not be the most appropriate choice. DOE notes that, if specific applications necessitate different speed settings, manufacturers may continue to produce such equipment to serve the market need for equipment with specific speed settings. The DOE test procedure does not affect the flexibility of manufacturers to produce equipment that is demanded by the market; it just describes how to rate such equipment.

Additionally, Hayward and APSP pointed out a discrepancy between Table 1 in the regulatory text of the September 2016 DPPP test procedure NOPR and the language presented in the rest of the NOPR. Specifically, Hayward noted that the required head for the variable-speed and multi-speed high flow load point should be " $H \geq 0.0082 \times Q_{\text{low}}^2$ ," rather than " $H = 0.0082 \times$



$Q_{low}^2$ ," which was printed in Table 1 of the September 2016 DPPP test procedure NOPR. (Hayward, No. 6 at p. 3; APSP, No. 8 at p. 4) DOE agrees with Hayward and APSP. A typographical error occurred in Table 1 in the September 2016 DPPP test procedure NOPR and the equation should have read " $H \geq 0.0082 \times Q_{low}^2$ " based on the proposed load points for multi-speed dedicated purpose pool pumps. However, based on the adopted load points, DOE is specifying the load points as depicted in Table III.4, which have the appropriate mathematical operators.

During the September 2016 DPPP test procedure NOPR public meeting, Pentair also requested verification regarding Figure III.5 in the September 2016 DPPP test procedure NOPR and a similar figure in the September 2016 DPPP test procedure NOPR public meeting presentation. (Pentair, Public Meeting Transcript, No. 3, p. 54) DOE acknowledged during the September 2016 DPPP test procedure NOPR public meeting that the public meeting presentation slide was correct and Figure III.5 in the September 2016 DPPP test procedure NOPR was incorrect.<sup>28</sup> Accordingly, in this final rule, DOE includes the corrected and clarified version of the figure, which is labeled Figure III.2 in this final rule.

APSP and Zodiac also requested clarification regarding how the high-speed flow point is based on a flow rate of 80 percent of the flow rate at maximum speed on curve C and head at or above curve C. (APSP, No. 8 at p. 4; Zodiac, No. 13 at p. 2) DOE responds that, as discussed in the September 2016 DPPP test procedure NOPR, the DPPP Working Group recommended the high speed load point corresponding to a flow rate of 80 percent of the flow at maximum speed on curve C to reflect that multi- and variable-speed pool filter pumps can be optimized to account for the oversizing the typically occurs in the field and provide a specific desired amount of flow that may be less than the flow rate at maximum speed. 81 FR 64580, 64606–64610 (Sept. 20, 2016).

Finally, APSP and Zodiac commented that they would like to see a tolerance for the 80 percent load point for multi-speed and variable-speed pool filter pumps, as a speed of 80.00 percent exactly would be difficult to achieve. (APSP, No. 8 at p. 5; Zodiac, No. 13 at p. 2). In response, DOE clarifies that the neither the load points proposed in the September 2016 DPPP test procedure NOPR nor the load points adopted in this final rule for multi-speed and variable-speed pool filter pumps require exact speeds to be achieved. Instead, the load points specify specific head or flow

values that must be achieved at the lowest available speed for which the pump can achieve the specified flow rate and/or head value; a pump may vary speed to achieve this load point. DOE proposed and is adopting thresholds on the specified head or flow values to account for experimental variability, which are discussed in section III.E.2.d.

#### d. Load Point Weighting Factors

WEF is calculated as the weighted average flow rate divided by the weighted average input power to the dedicated-purpose pool pump at various load points, as described in equation (1). For this reason, DOE also must assign weights to the load points discussed above for each self-priming or non-self-priming pool filter pump. In the September 2016 DPPP test procedure NOPR, consistent with the DPPP Working Group recommendations (Docket No. EERE–2015–BT–STD–0008, No. 51 Recommendation #7 at p. 5) as well as DOE's own analysis, DOE proposed a weight of 1.0 for single-speed self-priming and non-self-priming pool filter pumps and weights of 0.20 at the high flow point and 0.80 at the low flow point for two-speed, multi-speed, and variable-speed pool filter pumps, as summarized in Table III.5. 81 FR 64580, 64610 (Sept. 20, 2016).

TABLE III.5—SUMMARY OF LOAD POINT WEIGHTS ( $w_i$ ) FOR SELF-PRIMING AND NON-SELF-PRIMING POOL FILTER PUMPS RECOMMENDED BY THE DPPP WORKING GROUP

DPPP varieties	Speed type	Load point(s) $i$	
		Low flow	High flow
Self-Priming Pool Filter Pumps and Non-Self-Priming Pool Filter Pumps .....	Single .....	.....	1.0
	Two/Multi/Variable .....	0.80	0.20

DOE requested comment on these proposed weights. In response to DOE's proposed weights, APSP and Zodiac stated that unbalanced weighting of the economical single-speed pumps negatively affects consumers who only operate pools for a short seasonal duration. (APSP, No. 8 at p. 5; Zodiac, No. 13 at p. 2) DOE acknowledges that pool pumps with more than one speed, such as two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps, will have a greater (*i.e.*, more efficient) WEF score than a single-speed pump. However, this is consistent with the intent of the DPPP Working Group and the typical energy consumption of such pumps in the field. That is, single-

speed pumps will use more energy than comparable two-speed, multi-speed, or variable-speed pumps. DOE also disagrees with APSP and Zodiac that a load point of 1.0 for single-speed pool filter pumps is "unbalanced" because, as recommended by the DPPP Working Group, single-speed pool pump operate at only one load point, which must be fully weighted in order to accurately and equitably account for the energy performance of such pumps.

APSP and Hayward agreed with the 0.8 value for low flow for two-speed pool filter pumps. (APSP, No. 8 at p. 5; Hayward, No. 6 at p. 3) CEC, in written comments, affirmed DOE's proposal to establish weighting factors for single-

speed, two-speed, multi-speed, and variable-speed pool filter pumps. (CEC, No. 7 at p. 2) As such, DOE is adopting, in this final rule, the weights proposed in the September 2016 DPPP test procedure NOPR.

#### e. Applicability of Two-Speed, Multi-Speed, and Variable-Speed Pool Filter Pump Test Methods

As discussed in section III.B.7, DOE proposed in the September 2016 DPPP test procedure NOPR to establish specific definitions for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps that would dictate which of the pool filter pump test methods applies to a given

<sup>28</sup> The public meeting slides can be found in the docket ([www.regulations.gov](http://www.regulations.gov))

#/docketDetail;D=EERE-2016-BT-TP-0002) No. 2 at p. 31.

pool filter pump. The specific test methods for each of the DPPP speed configurations are described in sections III.D.1.a through III.D.1.c. The definitions for two-speed, multi-speed, and variable-speed dedicated-purpose pool pumps establish specific criteria that any given dedicated-purpose pool pump must meet in order to be considered such a pump and be eligible to apply the test points for two-speed, multi-speed, and variable-speed pool filter pumps, respectively. If a dedicated-purpose pool pump does not meet the definition of a two-speed, multi-speed, or variable-speed dedicated-purpose pool pump discussed in section III.B.7, DOE proposed in the September 2016 DPPP test procedure NOPR that such a pump would be tested using the single-speed pool filter pump test point, regardless of the number of operating speeds the pump may have. 81 FR 64580, 64610 (Sept. 20, 2016).

In the September 2016 DPPP test procedure NOPR, consistent with the recommendations of the DPPP Working Group (Docket No. EERE-2015-BT-STD-0008, No. 82, Recommendation #5B at p. 3), DOE also proposed that two-speed self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control with such capability but is unable to operate without the presence of such a pool pump control. *Id.* DOE also proposed that two-speed self-priming pool filter pumps (in the referenced size range) that do not meet the proposed control requirements would be tested as a single-speed pool filter pump. *Id.*

Hayward commented, at the September 2016 DPPP test procedure NOPR public meeting, that two-speed dedicated-purpose pool pumps should be allowed to operate at low speed without the requisite control, instead of not able to operate at all. (Hayward, Public Meeting Transcript, No. 3 at pp. 21, 26–27) DOE addressed this comment in section III.B.7.a. In that section, DOE noted that DOE believes the two-speed DPPP test points are only applicable to and representative of two-speed dedicated-purpose pool pumps operated with the appropriate controls. If a two-speed dedicated-purpose pool pump is capable of operating, even at low speed, without an applicable pool pump

control, this significantly increases the risk that two-speed pool filter pumps would be installed and operated without an appropriate control. Similarly, with regard to the applicability of the two-speed test points, DOE believes that two-speed dedicated-purpose pool pumps greater than 0.711 rated hydraulic horsepower must be distributed in commerce with either an appropriate control or not able to operate without the presence of such a pool pump control in order to apply the two-speed dedicated-purpose pool pump test points. If the pump can operate without an appropriate control, even at low speed, the two-speed test points would not be representative of the pump's energy performance in the field. DOE did not receive any comments on this proposal. Therefore, DOE is adopting in this final rule the requirements for applying the two-speed dedicated-purpose pool pump test points proposed in the September 2016 DPPP test procedure NOPR, which was agreed to by all DPPP Working Group members as part of the June 2016 DPPP Working Group Recommendations.

## 2. Waterfall Pumps

DOE also proposed a unique test point for waterfall pumps in the September 2016 DPPP test procedure NOPR. 81 FR 64580, 64610–64611 (Sept. 20, 2016). Under the definition discussed in section III.B.4.a, waterfall pumps are pool filter pumps that have a maximum head less than or equal to 30 feet and a maximum speed less than or equal to 1,800 rpm. As discussed in the September 2016 DPPP test procedure NOPR, waterfall pumps are specialty-purpose single-speed, pool filter pumps that typically operate waterfalls or other water features in a pool. *Id.*

Because of these specific applications, the DPPP Working Group recommended a single unique test point at a fixed head of 17 feet and the maximum operating speed for waterfall pumps, which the DPPP Working Group believed was representative of typical applications. Consistent with the single recommended load point, the DPPP Working Group also recommended fully weighting that load point (*i.e.*, assigning it a weight of 1.0). (Docket No. EERE-2015-BT-STD-0008, No. 51 Recommendation #6 at p. 5)

DOE agreed with the DPPP Working Group recommendations; however, DOE slightly modified the recommendation by adding greater specificity to the head value in DOE's proposal. DOE proposed to test waterfall pumps at a single load point at maximum speed and a head of 17.0 feet and to fully weight that single load point. 81 FR 64580, 64610–64611

(Sept. 20, 2016). DOE received no comment on the proposal and, therefore, is adopting the load point and weighting for waterfall pumps proposed in the September 2016 DPPP test procedure NOPR.

## 3. Pressure Cleaner Booster Pumps

DOE also proposed a unique test point for pressure cleaner booster pumps in the September 2016 DPPP test procedure NOPR. 81 FR 64580, 64611–64612 (Sept. 20, 2016). Pressure cleaner booster pumps, as defined in section III.B.4.b, are dedicated-purpose pool pumps that are specifically designed to propel pressure-side pool cleaners along the bottom of the pool in pressure-side cleaner applications. These pressure-side cleaner applications require a high amount of head and a low flow. In the December 2015 DPPP Working Group recommendations, the DPPP Working Group had recommended a single, fixed load point of 90 feet of head at maximum speed based on the fact that any given pressure-side pool cleaner application is typically a single, fixed load point. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendations #6) However, in the second round of negotiations, the DPPP Working Group reevaluated the recommended test procedure for pressure cleaner booster pumps and its ability to representatively evaluate and differentiate the potentially variable energy performance of different pressure cleaner booster pump technologies. Specifically, to better capture the potential for variable-speed pressure cleaner booster pumps, in the June 2016 DPPP Working Group recommendations, the DPPP Working Group revised the recommended test point for pressure cleaner booster pumps to be a flow rate of 10 gpm at the minimum speed that results in a head value at or above 60 feet. (Docket No. EERE-2015-BT-STD-0008, No. 82, Recommendation #8 at pp. 4–5)

In either case, as only a single load point is required to adequately characterize the efficiency of pressure cleaner booster pumps, the DPPP Working Group recommended a weighting factor of 1.0 for measured performance at that single load point when calculating WEF. (Docket No. EERE-2015-BT-STD-0008, No. 51, Recommendation #6 and #7 at p. 5)

In the September 2016 DPPP test procedure NOPR, DOE proposed to adopt the load point and weighting recommended in the June 2016 DPPP Working Group recommendations; however, DOE added specificity to the flow and head values in the September 2016 DPPP test procedure NOPR. Specifically, DOE proposed to test

pressure cleaner booster pumps at a single load point of 10.0 gpm at the minimum speed that results in a head value at or above 60.0 feet and to weight the measured performance of the pump at that load point with a weighting factor of 1.0. 81 FR 64580, 64611–64612 (Sept. 20, 2016).

In response to DOE's proposed test method for pressure cleaner booster pumps, APSP and Zodiac commented that the proposed test point seemed reasonable. (APSP, No. 8 at p. 5; Zodiac, No. 13 at p. 2). DOE thanks APSP and Zodiac for their supportive comments.

In written comments, Pentair stated that it would be more appropriate to base the load point for pressure cleaner booster pump testing on a system friction curve instead of a defined single point. (Pentair, No. 11 at p. 3) In response, DOE notes that the proposed load point for pressure cleaner booster pumps was developed based on input from the DPPP Working Group and available information regarding the representative operating characteristics for such pumps. Specifically, the DPPP Working Group recommended a load point of 10 gpm at the minimum speed that results in a head value at or above 60 feet, because this scenario accommodates all pressure cleaner booster pumps on the market. At the same time this scenario also accounts for the potential improved energy performance of pressure cleaner booster pumps that could use variable speed technology to precisely match the head requirements of a pressure cleaner system. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #8 at pp. 4–5; Docket No. EERE–2015–BT–STD–0008, No. 101 at pp. 11–20) The DPPP Working Group selected a value of

10 gpm based on the typical flow rate that was required or recommended for suction-side pressure cleaner apparatus to function. (Docket No. EERE–2015–BT–STD–0008, No. 100, CA IOUs, pp. 186–188; 197–198; Docket No. EERE–2015–BT–STD–0008, No. 101, Various, pp. 14–15, 49–50, 87–89). Although DOE understands that a system curve that includes both static and dynamic friction head would theoretically describe the relationship between head and flow for pressure cleaner booster pump applications, DOE believes that such a system curve is not necessary or representative in this case because: (1) Pressure cleaner booster pumps operate at only one load point and (2) the specified flow point and head threshold appropriately describe the required operating parameters for pressure cleaner booster pump applications. That is, as noted by the DPPP Working Group, suction-side pressure cleaner apparatus typically recommend a specific flow rate that will enable the equipment to operate correctly. DOE acknowledges that a certain amount of pressure must be produced by the pressure cleaner booster pump to deliver the recommended flow rate. However, once that flow and head value are achieved, the pump will operate at only that one load point. Therefore, based on DOE's understanding of pressure cleaner booster pump applications, DOE is requiring in this final rule that a specific flow rate must be achieved regardless of the installation's system curve.

DOE did not receive any other comments related to this proposal. Therefore in this final rule, DOE is adopting the proposal that pressure cleaner booster pumps to be tested at a

single load point of 10.0 gpm at the minimum speed that results in a head value at or above 60.0 feet and to weight the measured performance of the pump at that load point with a weighting factor of 1.0.

#### 4. Summary

In summary, DOE adopts, in this final rule, unique load points for the different varieties and speed configurations of dedicated-purpose pool pumps. DOE's load points ( $i$ ) and weights ( $w_i$ ) used in determining WEF for each pump variety are presented in Table III.6.

DOE requested comment on the high-speed and low-speed load points proposed for all DPPP equipment classes. 81 FR 64580, 64642–64643 (Sept. 20, 2016). Hayward requested clarification regarding whether all of the load points used to determine WEF should be measured on system curve C. (Hayward, No. 6 at p. 2) DOE refers Hayward to Table III.6, which summarizes the load points for all dedicated-purpose pool pumps subject to the test procedure adopted in this final rule. As shown in Table III.6, all of the load points for self-priming and non-self-priming pool filter pumps are specified with respect to curve C. However, while many self-priming and non-self-priming pool filter pumps models will be evaluated directly on curve C, certain models may have their load points measured at head values above curve C, if the load point cannot be measured on curve C based on the operating speeds available on the pump. In addition, waterfall pumps and pressure cleaner booster pumps have load points that are specified with respect to unique flow and/or head values and do not reference curve C.

TABLE III.6—LOAD POINTS ( $i$ ) AND WEIGHTS ( $w_i$ ) FOR EACH DPPP VARIETY AND SPEED CONFIGURATION

DPPP varieties	Speed type	Test points					Weight ( $w_i$ )
		Number of points ( $n$ )	Load point ( $i$ )	Flow rate ( $Q$ )	Head ( $H$ )	Speed ( $n$ )	
Self-Priming Pool Filter Pumps And Non-Self-Priming Pool Filter Pumps (with hydraulic hp $\leq 2.5$ hp).	Single * .....	1	High .....	$Q_{\text{high}}$ (gpm) = $Q_{\text{max\_speed@C}}$ = flow at maximum speed on curve C	$H = 0.0082 \times Q_{\text{high}}^2$	Maxspeed .....	1.0
	Two-Speed .....	2	Low .....	$Q_{\text{low}}$ (gpm) = Flow rate associated with specified head and speed that is not below: <ul style="list-style-type: none"> <li>• 31.1 gpm if pump hydraulic hp at max speed on curve C is <math>&gt;0.75</math> or</li> <li>• 24.7 gpm if pump hydraulic hp at max speed on curve C is <math>\leq 0.75</math> (a pump may vary speed to achieve this load point)</li> </ul>	$H \geq 0.0082 \times Q_{\text{low}}^2$	Lowest speed capable of meeting the specified flow and head values, if any.	0.8

TABLE III.6—LOAD POINTS (i) AND WEIGHTS (w<sub>i</sub>) FOR EACH DPPP VARIETY AND SPEED CONFIGURATION—Continued

DPPP varieties	Speed type	Test points					Weight (w <sub>i</sub> )
		Number of points (n)	Load point (i)	Flow rate (Q)	Head (H)	Speed (n)	
Waterfall Pumps .....	Multi- and Variable-Speed	2	High .....	$Q_{high} \text{ (gpm)} = Q_{max\_speed@C} = \text{flow at max speed on curve C}$	$H = 0.0082 \times Q_{high}^2$	Max speed .....	0.2
			Low .....	$Q_{low} \text{ (gpm)}$ • If pump hydraulic hp at max speed on curve C is >0.75, then $Q_{low} \geq 31.1 \text{ gpm}$ • If pump hydraulic hp at max speed on curve C is $\leq 0.75$ , then $Q_{low} \geq 24.7 \text{ gpm}$ (a pump may vary speed to achieve this load point)	$H = 0.0082 \times Q_{low}^2$	Lowest speed capable of meeting the specified flow and head values.	0.8
			High .....	$Q_{high} \text{ (gpm)} \geq 0.8 \times Q_{max\_speed@C} \geq 80\%$ of flow at maximum speed on curve C (a pump may vary speed to achieve this load point)	$H = 0.0082 \times Q_{high}^2$	Lowest speed capable of meeting the specified flow and head values.	0.2
	Single .....	1	High .....	Flow corresponding to specified head (on max speed pump curve)	17.0 ft	Max speed .....	1.0
Pressure Cleaner Booster Pumps.	All .....	1	High .....	10.0 gpm (a pump may vary speed to achieve this load point)	$\geq 60.0 \text{ ft}$	Lowest speed capable of meeting the specified flow and head values, if any.	1.0

\* As discussed in section III.D.1.e, any pumps that do not meet DOE's definitions of two-speed, multi-speed, or variable-speed pool filter pump, as applicable, and, in the case of two-speed self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower and less than 2.5 rated hydraulic horsepower and do not meet the requirements to apply the two-speed pool filter pump test method must be tested as a single-speed pool filter pump.

### E. Determination of Pump Performance

As part of DOE's test procedure for dedicated-purpose pool pumps, DOE is specifying how to measure the performance of the dedicated-purpose pool pump at the applicable load points consistently and unambiguously. Specifically, to determine WEF for applicable dedicated-purpose pool pumps, the test procedure specifies methods to measure the driver input power to the motor or to the DPPP controls (if any) and the flow rate at each specified load point, as well as the hydraulic output power at maximum speed on system curve C (*i.e.*, the rated hydraulic horsepower, see section III.G.1).

The following section III.E.1 discusses the industry standard DOE is incorporating by reference for measuring the performance of dedicated-purpose pool pumps. The September 2016 DPPP test procedure NOPR proposed several exceptions, modifications, and additions to this base test procedure that DOE deemed necessary to ensure accuracy and repeatability. These are presented in sections III.E.2.a through III.E.2.f. Finally, DOE is adopting specific procedures for calculating the WEF from the collected test data and rounding the values to ensure that the test results are

determined in a consistent manner (section III.E.2.g).

#### 1. Incorporation by Reference of HI 40.6–2014

In the September 2016 DPPP test procedure NOPR, in accordance with the DPPP Working Group recommendations (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #8 at p. 6), DOE proposed to incorporate by reference certain sections of HI 40.6–2014 as part of DOE's test procedure for measuring the energy consumption of dedicated-purpose pool pumps, with the exceptions, modifications, and additions listed in III.E.2. DOE stated that HI 40.6–2014 contains the relevant test methods needed to accurately characterize the performance of dedicated-purpose pool pumps, with a few exceptions, modifications, and additions. *Id.* Specifically, HI 40.6–2014 defines and explains how to calculate driver power input,<sup>29</sup> volume per unit

time,<sup>30</sup> pump total head,<sup>31</sup> pump power output,<sup>32</sup> overall efficiency,<sup>33</sup> and other relevant quantities at the specified load points necessary to determine the metric (WEF), and contains appropriate specifications regarding the test setup, methodology, standard rating conditions, equipment specifications, uncertainty calculations, and tolerances.

DOE also noted that HI 40.6–2014, with several exceptions, modifications, and additions was adopted in the January 2016 general pumps test procedure final rule. 81 FR 4086, 4109–4117 (Jan. 25, 2016). Therefore, HI 40.6–2014, with certain exceptions, is already incorporated by reference into appendix

<sup>30</sup> The term “volume per unit time” in HI 40.6 is defined as “the volume rate of flow in any given section” and is used synonymously with “flow” and “flow rate” in this document.

<sup>31</sup> The term “pump total head” is defined in HI 40.6–2014 as the difference between the outlet total head and the inlet total head and is used synonymously with the terms “total dynamic head” and “head” in this document.

<sup>32</sup> The term “pump power output” in HI 40.6 is defined as “the mechanical power transferred to the liquid as it passes through the pump, also known as pump hydraulic power.” It is used synonymously with “hydraulic horsepower” in this document. However, where hydraulic horsepower is used to reference the capacity of a dedicated-purpose pool pump, it refers to the rated hydraulic horsepower, as defined in section III.G.1.

<sup>33</sup> The term “overall efficiency” is defined in HI 40.6–2014 as a ratio of pump power output to driver power input and describes the combined efficiency of a pump and driver.

<sup>29</sup> The term “driver power input” in HI 40.6–2014 is defined as “the power absorbed by the pump driver” and is synonymous with the term “driver input power” and “input power to the motor and/or controls,” as used in this document.

A to subpart Y of part 431. 10 CFR 431.463.

In response to DOE's proposal to incorporate by reference certain sections of HI 40.6–2014, CEC expressed its support of DOE's proposal. (CEC, No. 7 at p. 2) Conversely, APSP and Hayward suggested that DOE consider raising the upper limit of the test fluid required in HI 40.6–2014 from 86 °F to 107 °F to be consistent with the requirements for other test standards, including NSF–50 and ENERGY STAR. APSP and Hayward added that this would allow for manufacturers to establish and maintain one temperature volume of water for NSF, ENERGY STAR, and DOE testing, allowing for more efficient use of laboratory resources. (APSP, No. 8 at pp. 5–6; Hayward, No. 6 at p. 4)

In response to APSP and Hayward's suggestion that DOE allow the use of warmer temperature water for use in testing dedicated-purpose pool pumps, DOE evaluated the impact of using 107 °F water as opposed to water between 50 and 86 °F on the determined WEF, rated hydraulic horsepower, or other metrics. Based on DOE's review, testing with water up to 107 °F would have an insignificant impact on the resultant metrics and, therefore, to reduce testing burden and allow DOE testing to be streamlined with testing for other programs, DOE is adopting requirements for the test fluid that allow testing with water up to 107 °F, as requested by APSP and Hayward.

Similarly, in their comments, APSP and Hayward also requested that DOE use a nephelometric turbidity unit (NTU) measurement to determine and describe the appropriate test fluid for testing dedicated-purpose pool pumps, as opposed to the kinematic viscosity and maximum density metrics used in HI 40.6–2014 and proposed by DOE. APSP and Hayward requested clarification regarding whether test labs would be required to measure the kinematic viscosity and density of the test water and whether these parameters would need to be included in test reports and data. APSP and Hayward stated that test lab water is not currently measured to determine kinematic viscosity and density. APSP and Hayward stated that it is not clear what options test labs will have if incoming municipal supply water does not meet the proposed requirements for kinematic viscosity and density. APSP and Hayward believe that the NTU measurement, which is currently referenced in the NSF/ANSI 50–2015 test and was been used in the DPPP industry for over 20 years, is a more convenient and cost effective criteria to use to specify the characteristics of the

test fluid. (APSP, No.8 at pp. 5–6; Hayward, No. 6 at pp. 4–5).

In response to APSP's and Hayward's suggestion regarding the characteristics of the test fluid, DOE notes that it reviewed the test fluid requirements for NSF/ANSI 50–2015, the ENERGY STAR Test Method for Pool Pumps,<sup>34</sup> and HI 40.6–2014. As discussed in the September 2016 DPPP test procedure NOPR, section C.3.3, "Test conditions," of NSF/ANSI 50–2015 specifies test conditions for both swimming pools and hot tubs/spas in terms of temperature and NTU thresholds, as shown in Table III.7. That section further states that all pumps, except those labeled for swimming pool applications only, are to be tested at the hot tub/spa conditions. 81 FR 64580, 64625–64626 (Sept. 20, 2016).

TABLE III.7—TEST CONDITIONS SPECIFIED IN NSF/ANSI 50–2015

Measurement	Swimming pool	Hot tub/spa
Water Temperature	75 ± 10 °F ..	102 ± 10 °F
Turbidity .....	≤15 NTU * ...	≤15 NTU

\* NTU = Nephelometric Turbidity Units; a measure of how much light is scattered by the particles contained in a water sample.

Section 40.6.5.5, "Test conditions," of HI 40.6–2014, which was proposed to be incorporated by reference into the DPPP test procedure in the September 2016 DPPP test procedure NOPR, specifies that all testing must be conducted with "clear water" that is between 50 and 86 °F, where clear water means water with a maximum kinematic viscosity of  $1.6 \times 10^{-5}$  ft<sup>2</sup>/s and a maximum density of 62.4 lb/ft<sup>3</sup>. 81 FR at 64614–64615. The ENERGY STAR Test Method for Pool Pumps<sup>35</sup> does not appear to contain requirements regarding the temperature of the test fluid.

In response to APSP's and Hayward's concern regarding the availability of "clear water" as defined in HI 40.6–2014, DOE notes that the characteristics of clear water specified in HI 40.6–2014 are meant to be inclusive of any fresh water in the temperature range of interest, as well as sea water, and would certainly be available from any tap. For

reference, the kinematic viscosity of fresh water between 50 and 107 °F ranges from  $1.4 \times 10^{-5}$  ft<sup>2</sup>/s to  $0.69 \times 10^{-5}$  ft<sup>2</sup>/s, respectively, while the kinematic viscosity of sea water is approximately  $1.24 \times 10^{-5}$  ft<sup>2</sup>/s at 68 °F.<sup>36</sup> However, DOE acknowledges that DPPP manufacturers may be less familiar with the measurement of kinematic viscosity than NTU. As the characterization of the test fluid is not expected to greatly affect the resultant WEF score, provided testing is done with municipal water within a reasonable temperature range, DOE agrees with Hayward that the NTU metric referenced by NSF/ANSI 50–2015 is also an acceptable criteria to describe water that is reasonably free from impurities for the purposes of testing.

As discussed in the September 2016 DPPP test procedure NOPR, DOE noted that the viscosity and density requirements adopted in HI 40.6–2014 are intended to accomplish the same purpose as the turbidity limits in NSF/ANSI 50–2015, to ensure the test is conducted with water that does not have contaminants or additives in such concentrations that they would affect the thermodynamic properties of the water. Therefore, to better align with NSF/ANSI 50–2015 and the existing capabilities and experience of DPPP test labs, in this final rule, DOE is adopting requirements that testing be carried out with water that is between 50 and 107 °F with less than or equal to 15 NTU, as opposed to the "clear water" defined in section 40.6.5.5 of HI 40.6–2014. DOE will also exclude section 40.6.5.5 of HI 40.6–2014 from the incorporation by reference into the DOE test procedure, as that section will no longer be necessary. As a result, measurements of kinematic viscosity and density of the test fluid will not be required, minimizing burden on manufacturers. However, measurements of fluid temperature and NTU will be required to be made and maintained as part of the test records underlying certification to DOE to ensure that the test fluid is in accordance with the DOE requirements.

With regard to DOE's proposal to incorporate by reference appendix D of HI 40.6–2014, "Suitable Time Periods for Calibration of Test Instruments," APSP and Hayward noted that HI 40.6–2014 does not explicitly provide an option for historical data to be used as a basis to support a longer recalibration

<sup>34</sup> EPA. 2013. "ENERGY STAR Program Requirements Product Specification for Pool Pumps—Final Test Method." Available at: <https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf>.

<sup>35</sup> EPA. 2013. "ENERGY STAR Program Requirements Product Specification for Pool Pumps—Final Test Method." Available at: <https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf>.

<sup>36</sup> Engineering Toolbox. *Liquids—Kinematic Viscosity*. Last accessed Nov. 15, 2016. Available at: [http://www.engineeringtoolbox.com/kinematic-viscosity-d\\_397.html](http://www.engineeringtoolbox.com/kinematic-viscosity-d_397.html).

interval than recommended by table D.1 of HI 40.6–2014. APSP and Hayward stated that this provision used to be available as an option in HI 14.6–2011. APSP and Hayward added that it currently calibrates all instruments annually, in accordance with ISO 17025,<sup>37</sup> which would not comply with some of the required calibration intervals in HI 40.6–2014, such as 0.33 years for pressure transducers. As such, APSP and Hayward suggested DOE include a provision to allow for historical data to be used to determine longer calibration intervals than currently provided for in appendix D of HI 40.6–2014 (APSP, No. 8 at pp. 5–6; Hayward, No. 6 at p. 5).

In response to APSP's and Hayward's suggestion regarding the allowance for extended calibration intervals beyond those specified in appendix D of HI 40.6–2014 based on historical data, DOE agrees that such a provision used to be available in ANSI/HI 14.6–2011, which preceded HI 40.6–2014. DOE understands that it is common practice to extend the calibration interval of some equipment that has demonstrated, based on past calibration data, to maintain calibration over several calibration cycles. DOE also recognizes that this can reduce the burden of maintaining equipment within the specifications required by the DOE test procedure. As such, DOE believes it is reasonable to allow the use of historical test data to justify calibration intervals longer than those specified in table D.1 of HI 40.6–2014 and that such a provision does not compromise the accuracy of the resultant test data. However, DOE believes additional specificity is required to ensure that unreasonably long time periods between calibration intervals are not permitted. Therefore, DOE is adopting requirements in this final rule that

historical calibration data may be used to justify time periods up to three times longer than those specified in table D.1 of HI 40.6–2014. In such a case, the supporting historical data must show maintenance of calibration of the given instrument up to the selected extended calibration interval on at least two unique occasions, based on the interval specified in HI 40.6–2014. For example, in the case of the pressure transducers discussed by Hayward, Hayward may justify a calibration interval up to 1 year<sup>38</sup> (three times the calibration interval of 0.33 years specified in HI 40.6–2014) based on calibration data taken at least every 0.33 years that demonstrates that the calibration has been maintained for 1 year for at least two different years.

China stated, in written comments, its belief that the proposed test method did not provide a test method for total head. (China, No. 14 at p. 3) DOE disagrees and clarifies that, as stated previously, the proposed test procedure proposed to incorporate by reference certain sections of HI 40.6–2014, which contain relevant specifications regarding test setup, methodology, standard rating conditions, equipment specifications, uncertainty calculations, and tolerances to measure pump total head, among other pump performance metrics.

DOE did not receive any comments on any of the other sections of HI 40.6–2014 DOE proposed to incorporate by reference. Therefore, in this final rule, DOE incorporates by reference HI 40.6–2014, with certain exceptions, modifications, and additions, into the new appendices B and C (see section III.H) to subpart Y that will contain the DPPP test procedure. DOE notes that DOE is using the nomenclature “HI 40.6–2014–B” in the regulatory text to refer to the incorporation by reference of HI 40.6–2014 for the dedicated-purpose

pool pumps test procedure in appendices B and C and differentiate it from the existing incorporation by reference of HI 40.6–2014 to appendix A established in the January 2016 general pumps test procedure final rule. 81 FR 4086, 4109–4117 (Jan. 25, 2016).

## 2. Exceptions, Modifications and Additions to HI 40.6–2014

In general, DOE finds the test methods contained within HI 40.6–2014 are sufficiently specific and reasonably designed to produce test results necessary to determine the WEF of applicable dedicated-purpose pool pumps. However, only certain sections of HI 40.6–2014 are applicable to the new DPPP test procedure. In addition, DOE requires a few exceptions, modifications, and additions to ensure test results are as repeatable and reproducible as possible. DOE's modifications and clarifications to HI 40.6–2014 are addressed in the subsequent sections III.E.2.a through III.E.2.g.

### a. Applicability and Clarification of Certain Sections of HI 40.6–2014

Although DOE is incorporating by reference HI 40.6–2014 as the basis for the DPPP test procedure, DOE noted in the September 2016 DPPP test procedure NOPR that some sections of the standard are not applicable to the DPPP test procedure and other sections require clarification regarding their applicability when conducting the DPPP test procedure. 81 FR 64580, 64615–20 (Sept. 20, 2016). Table III.8 provides an overview of the sections of HI 40.6–2014 that DOE proposed to exclude from the DOE test procedure for dedicated-purpose pool pumps, as well as those that DOE proposed to only be optional and not required for determination of WEF. *Id.*

TABLE III.8—SECTIONS OF HI 40.6–2014 DOE PROPOSED TO EXCLUDE FROM INCORPORATION BY REFERENCE OR MAKE OPTIONAL AS PART OF THE DPPP TEST PROCEDURE

Section No.	Title	Applicability
40.6.4.1 .....	Vertically suspended pumps .....	Excluded.
40.6.4.2 .....	Submersible pumps .....	Excluded.
40.6.5.3 .....	Test report .....	Excluded.
40.6.5.5.1 .....	Test procedure .....	Certain Portions Optional for Representations.
40.6.5.5.2 .....	Speed of rotation during test .....	Excluded.
40.6.6.1 .....	Translation of test results to rated speed of rotation .....	Excluded.
40.6.6.2 .....	Pump efficiency .....	Optional for Representations.
40.6.6.3 .....	Performance curve .....	Optional for Representations.
A.7 .....	Testing at temperatures exceeding 30 °C (86 °F) .....	Excluded.
Appendix B .....	Reporting of test results .....	Excluded.

<sup>37</sup> ISO/IEC 17025, “General requirements for the competence of testing and calibration laboratories,” is an internationally recognized standard that contains specifics on testing, calibration methods,

data quality management systems, and other general requirements for test laboratories to carry out testing or calibration. See [www.iso.org](http://www.iso.org) for more information.

<sup>38</sup> While DOE acknowledges that three times 0.33 is 0.99, 0.99 years can practically be treated as 1 year, as the calibration intervals are not precise to the hundredths of a year (±3 days).

In the September 2016 DPPP test procedure NOPR, DOE discussed in detail the specific rationale for excluding or making optional certain sections of HI 40.6–2014. 81 FR 64580, 64615 (Sept. 20, 2016).

In response to DOE's proposal to exclude certain sections from the incorporation by reference of HI 40.6–2014, while making other sections optional for representations, Hayward suggested DOE reconsider the exception of section A.7 of HI 40.6–2017, "Testing at temperatures exceeding 30 °C (86 °F)," in light of their other suggestions related to elevated test fluid temperatures discussed in section III.E.1. Pentair commented that section 40.6.5.5.2, which requires the speed of the pump to be within 80 to 120 percent of the rated speed, should remain a stipulation of testing and should not be excluded, especially for single- and two-speed induction motor pumps, as NEMA–MG requires only better than 7.5 percent of the regulated speed. (Pentair, No. 11 at p. 3) China also commented that the proposed test procedure did not define a test method for rotating speed and, similarly, suggested maintaining speed between 80 and 110 percent of rated rotating speed. (China, No. 14 at p. 3)

In response to Hayward's comment regarding the proposed exclusion of section A.7 of HI 40.6–2014, as discussed in section III.E.1, DOE is adopting alternative criteria to describe the test fluid in lieu of the criteria specified in HI 40.6–2014. Therefore, a specific accommodation to test at higher temperatures, as specified in appendix A.7 of HI 40.6–2014, is not required. In addition, DOE notes that the instructions in section A.7 are not currently very descriptive and could introduce ambiguity to the test. As such, DOE excludes section A.7 of HI 40.6–2014 from incorporation by reference in this final rule.

In response to Pentair and China's comments regarding the measurement of and tolerances related to rotational speed, DOE clarifies that the adopted test procedure references specific load points for different varieties and speed configurations of dedicated-purpose pool pumps, as described in section III.D. These load points were specifically recommended by the DPPP Working Group and include specifications regarding the flow, head, and speed at each load point. For example, single-speed pool filter pumps must be evaluated on curve C at the maximum speed, which is typically the

only speed available.<sup>39</sup> Two-speed pool filter pumps must be evaluated at the maximum and low speed, which are, by definition, the only speeds available on the pump. The load points for multi-speed and variable-speed pool filter pumps do not specify speed values, but are described with respect to specific head and flow requirements. In all cases, tolerances around a given speed value are not relevant since there is no "target" speed value that must be attained. Instead, DOE describes tolerances around the tested flow or head values that must be achieved, as those values have specified values or thresholds that must be achieved and drive the specification of the load point. While the speed is integral to attaining a given load point, the tested speed is a dependent variable to satisfy the required head and flow values based on the capabilities of the pump. Therefore, DOE does not believe that allowing measurements at alternative speeds, either those specified in section 40.6.5.5.2 or NEMA MG–1–2016, is necessary or relevant to the DPPP test procedure. In addition, DOE understands the primary purpose of section 40.6.5.5.2 is to accommodate testing of very large pumps that may overload the power supply of the test lab when run at full speed. DOE does not believe this is a concern for dedicated-purpose pool pumps, most of which are less than 2.5 rated hydraulic horsepower. Therefore, this final rule does not incorporate by reference section 40.6.5.5.2, and requires all testing to be conducted at the appropriate load points specified in section III.D for each DPPP variety and speed configuration. Regarding measurement of speed, DOE notes that HI 40.6–2014, which is incorporated by reference in the adopted test procedure, includes specifications for measuring rotating speed.

DOE did not receive any other comments pertaining to the other sections DOE proposed to exclude from DOE's incorporation by reference. Therefore, in this final rule, DOE is not incorporating by reference section 40.6.4.1, 40.6.4.2, 40.6.5.3, 40.6.5.5.2, 40.6.6.1, section A.7 of appendix A, and appendix B of HI 40.6–2014 as part of the DOE test procedure for dedicated-

<sup>39</sup> As described in more detail in section III.D.1.e, if a dedicated-purpose pool pump does not meet the definition of a two-speed, multi-speed, or variable-speed dedicated-purpose pool pump discussed in section III.B.7, or the necessary criteria to apply the two-speed test method discussed in section III.D.1.e, such a pump must be tested using the single-speed pool filter pump test point, regardless of the number of operating speeds the pump may have.

purpose pool pumps. In addition, as discussed in section III.E.1, as DOE is adopting alternative criteria to describe the test fluid. For that reason, DOE is also excluding section 40.6.5.5 from the incorporation by reference of HI 40.6–2014. To allow manufacturers to make voluntary representations of other metrics, in addition to WEF, DOE incorporates by reference section 40.6.5.5.1, section 40.6.6.2, and section 40.6.6.3, of HI 40.6–2014 and clarifies that these sections are not required for determination of WEF, but may be optionally conducted to determine and make representations about other DPPP performance parameters.

#### b. Calculation of Hydraulic Horsepower

In addition to the clarifications regarding the applicability of certain sections of HI 40.6–2014 to the DPPP test procedure, DOE believes that clarification is also required regarding the calculation of hydraulic horsepower. As discussed in the September 2016 DPPP test procedure NOPR, DOE proposed that hydraulic horsepower must be calculated with a unit conversion factor of 3956, instead of 3960, which is specified in HI 40.6–2014. 81 FR 64580, 64617 (Sept. 20, 2016). DOE explained that using a value of 3956 is more accurate and precise given the properties of the specified test fluid. Also, as noted, in the September 2016 DPPP test procedure NOPR, the conversion factor of 3956 was adopted also in the January 2016 general pumps test procedure final rule. 81 FR 4086, 4109 (Jan. 25, 2016).

In response to DOE's proposal, during the September 2016 DPPP test procedure NOPR public meeting, Hayward sought clarification from DOE, as it believed that the value referred to the rotating speed of the pump. Hayward questioned whether this was the same value used during the DPPP Working Group meetings. (Hayward, Public Meeting Transcript, No. 3 at pp. 62–63) In response, during the September 2016 DPPP test procedure NOPR public meeting, Pentair clarified that the value was a unit conversion (Pentair, Public Meeting Transcript, No. 3 at pp. 62–63) and DOE clarified that the value of 3956 (as proposed in the September 2016 DPPP test procedure NOPR) was the one used throughout the DPPP Working Group meetings. APSP and Hayward later suggested, in their written comments, that the DPPP test procedure continue to rely on the 3960 value historically used in all hydraulic power calculations. (APSP, No. 8 at p. 6)

While DOE believes that the value of 3956 proposed in the September 2016



DPPP test procedure NOPR is more precise and accurate given the specific gravity of 1.0 assumed in the calculation of hydraulic power, the value of the unit conversion (3956 or 3960) does not meaningfully impact the resultant rated hydraulic horsepower within the number of number of digits to which rated hydraulic horsepower is to be reported. Therefore, in this final rule, DOE adopts a requirement that hydraulic horsepower must be calculated with a unit conversion factor of 3960, consistent with Hayward's request.

#### c. Data Collection and Determination of Stabilization

The DPPP test procedure must provide instructions regarding how to sample and collect data at each load point. Such instructions must ensure that the collected data are taken at stabilized conditions that accurately and precisely represent the performance of the dedicated-purpose pool pump at the designated load points, thus improving repeatability of the test.

In the September 2016 DPPP test procedure NOPR, DOE explained that section 40.6.5.5.1 of HI 40.6–2014 provides that all measurements shall be made under steady state conditions. DOE stated that the requirements for determining when the pump is operating under steady state conditions in HI 40.6–2014 were described as follows: (1) There is no vortexing, (2) the margins are as specified in ANSI/HI 9.6.1, “Rotodynamic Pumps Guideline for NPSH Margin,” and (3) the mean value of all measured quantities required for the test data point remains constant within the permissible amplitudes of fluctuations defined in Table 40.6.3.2.2 of HI 40.6–2014 over a minimum period of 10 seconds before performance data are collected. 81 FR 64580, 64617 (Sept. 20, 2016).

In addition to the requirements specified in section 40.6.5.5.1 of HI 40.6–2014, in the September 2016 DPPP test procedure NOPR, DOE proposed requirements that at least two unique measurements must be used to determine stabilization when testing pumps according to the DPPP test procedure. 81 FR 64580, 64617 (Sept. 20, 2016). DOE explained within the September 2016 test procedure NOPR, that HI 40.6–2014 does not specify the measurement interval for determination of steady state operation. *Id.* DOE's proposal of two measurements is the same as the requirement established in the January 2016 general pumps test procedure final rule. 81 FR 4086, 4011 (Jan. 25, 2016). This requirement accommodates a longer period between

the sampling of individual data points, as compared to the ENERGY STAR program. 81 FR 64580, 64617 (Sept. 20, 2016).

Section 40.6.3.2.2 of HI 40.6–2014, “Permissible fluctuations,” specifies that permissible damping devices may be used to minimize noise and large fluctuations in the data in order to achieve the specifications noted in Table 40.6.3.2.2 of HI 40.6–2014. In the September 2016 DPPP test procedure NOPR, similar to the January 2016 general pumps test procedure final rule (81 FR 4086, 4011 (Jan. 25, 2016)), DOE proposed that damping devices are only permitted to integrate up to the measurement interval to ensure that each stabilization data point is reflective of a separate measurement. 81 FR 64580, 64617 (Sept. 20, 2016). DOE also proposed in the September 2016 DPPP test procedure NOPR that, for physical dampening devices, the pressure indicator/signal must register 99 percent of a sudden change in pressure over the measurement interval to satisfy the requirement for unique measurements. This requirement is consistent with annex D of ISO 3966:2008(E), “Measurement of fluid flow in closed conduits—Velocity area method using Pitot static tubes,” which is referenced in HI 40.6–2014 for measuring flow with pitot tubes. 81 FR 64580, 64617 (Sept. 20, 2016).

In response to DOE's proposed stabilization requirements, particularly those incorporated by reference in section 40.6.5.5.1 of HI 40.6–2014, APSP and Hayward requested clarification of the definition of “vortexing” and an explanation of how to specifically determine if vortices are, or are not present. (APSP, No. 8 at pp.6–7; Hayward, No. 6 at p. 6) In response, DOE acknowledges that DOE did not propose a definition for “vortexing” or “vortices,” and such definitions are not contained in HI 40.6–2014. After reviewing the context of section 40.6.5.5.1 of HI 40.6–2014, DOE concludes that the language of “no vortexing” is a redundant, but informative statement, related to defining steady state conditions. In other words, vortexing is a specific scenario, which would cause test readings to fluctuate beyond the permissible amplitudes of fluctuations defined in Table 40.6.3.2.2 of HI 40.6–2014 over a minimum period of 10 seconds before performance data are collected. Accordingly, DOE will not establish any further definitions or verification procedures related to vortexing or vortices. Under section 40.6.5.5.1 of HI 40.6–2014, as incorporated by reference into the test

procedure, steady state is achieved when the mean value of all measured quantities required for the test data point remain constant within the permissible amplitudes of fluctuations defined in Table 40.6.3.2.2 over a minimum time of 10 seconds before data are collected. No explicit measurement or determination of vortexing or vortices is required.

DOE did not receive any additional comments on this proposal and, therefore, is adopting, in this final rule, the proposal that determination of stabilization must be made based on at least two unique measurements and any damping devices are only permitted to integrate up to the data collection interval.

#### d. Test Tolerances

As discussed in section III.D, DOE proposed in the September 2016 DPPP test procedure NOPR to specify unique load points for each DPPP variety and speed configuration. As DOE noted in the September 2016 DPPP test procedure NOPR, HI 40.6–2014 does not specify how close a measured data point must be to the specified load point or if that data point must be corrected in any way for deviations from the specified value. 81 FR 64580, 64617–18 (Sept. 20, 2016).

In the September 2016 DPPP test procedure NOPR, consistent with the tolerances adopted in the ENERGY STAR test procedure, DOE proposed tolerances of  $\pm 2.5$  percent on flow rate for self-priming and non-self-priming pool filter pumps and pressure cleaner booster pumps. However, due to the fact that the load point for waterfall pumps is specified as a fixed head value, DOE proposed a tolerance of  $\pm 2.5$  percent of head for waterfall pumps. DOE did not propose a tolerance on the tested speed, as the tested maximum speeds are specific to each dedicated-purpose pool pump being tested. 81 FR 64580, 64617–18 (Sept. 20, 2016).

In response to DOE's proposal, APSP and Hayward commented that maintaining  $\pm 2.5$  percent of the specified flow rate or head value will be difficult to achieve, particularly with regards to the 10 gpm load point for pressure cleaner booster pumps. APSP and Hayward requested any exemplary data that demonstrates stabilization can be maintained within the specified tolerance at low head or flows and that DOE consider a larger tolerance for low flow or head measurements (APSP, No. 8 at p. 7; Hayward, No. 6 at p. 6).

In response to APSP's and Hayward's request for larger tolerances on low flow and head values, DOE reiterates that DOE based the proposal in the

September 2016 DPPP test procedure NOPR on the existing tolerance requirements in the ENERGY STAR Test Method for Pool Pumps.<sup>40</sup> The ENERGY STAR method applies to all load points specified by the test method, including the minimum speed test point for variable-speed dedicated-purpose pool pumps. DOE also notes that the flow rates on Curves A, B, and C at minimum flow rate for many variable-speed dedicated-purpose pool pumps are at or below 10 gpm, as demonstrated in DOE's Self-Priming Pool Filter Pump Performance Database. (Docket No. EERE-2015-BT-STD-0008, No. 102) Specifically, 43 of the 83 total variable-speed self-priming pool filter pumps in DOE's database report flow rates less than or equal to 10 gpm and at least 19 of those 43 models are from the ENERGY STAR database.<sup>41</sup> Based on the fact that such requirements can be met to certify pumps in accordance with ENERGY STAR, DOE believes that such a requirement can be met when conducting the DOE DPPP test procedure. Although the pumps in the ENERGY STAR database should be conforming to the flow and head tolerances, DOE does not have access to source data to confirm this. Therefore, in light of Hayward's comment, in this final rule, DOE is adopting a broader tolerance requirement for lower flow scenarios. Specifically, the flow tolerance will be  $\pm 2.5$  percent of the specified flow rate or  $\pm 0.5$  gpm, whichever is greater. DOE believes that a range of 1.0 gpm can reasonably be maintained with typical lab testing equipment. DOE notes that such an accommodation is not necessary for waterfall pumps, since the tolerance is a fixed  $17.0 \pm 0.425$  feet.

In addition, based on the revised load points for multi-speed and variable-speed pool filter pumps presented in section III.D.1.c, DOE notes that the multi-speed and variable-speed pool filter pump load points are now specified with respect to the head value (*i.e.*,  $H = 0.0082 \times Q^2$ ), while the flow point may vary based on the operating speeds available on the pump. Therefore, in this final rule, DOE is revising the tolerances for the multi-speed and variable-speed pool filter pump test points to be achieved within  $\pm 2.5$  percent of the specified head value,

which is curve C. DOE is adopting all other tolerances as proposed in the September 2016 DPPP test procedure NOPR.

#### e. Power Supply Characteristics

In the September 2016 DPPP test procedure NOPR and consistent with the January 2016 general pumps test procedure final rule (81 FR 4086, 4112–4115 (Jan. 25, 2016)), DOE proposed tolerances for voltage, frequency, voltage unbalance, and total harmonic distortion that must be maintained at the input terminals to the motor and/or control, as applicable, when conducting the DPPP test procedure. 81 FR 64580, 64618–19 (Sept. 20, 2016). DOE discussed how the measurement of input power to the driver is an important element of the test, because input power is a key component of WEF. In addition, in the September 2016 DPPP test procedure NOPR, DOE discussed how large differences in voltage, frequency, voltage unbalance, or total harmonic distortion can affect the performance of the motor and/or control under test. *Id.*

DOE believes that, because dedicated-purpose pool pumps utilize electrical equipment (*i.e.*, motors and drives) similar to that used by general pumps, such requirements also apply when testing dedicated-purpose pool pumps. In the September 2016 DPPP test procedure NOPR, DOE proposed that when testing dedicated-purpose pool pumps the following conditions would apply to the main power supplied to the motor or controls, if any:

- Voltage maintained within  $\pm 5$  percent of the rated value of the motor.
- Frequency maintained within  $\pm 1$  percent of the rated value of the motor.
- Voltage unbalance of the power supply maintained within  $\pm 3$  percent of the rated value of the motor.
- Total harmonic distortion maintained at or below 12 percent throughout the test. 81 FR 64580, 64619 (Sept. 20, 2016).

APSP and Hayward submitted comments regarding voltage unbalance of the power supply. APSP and Hayward were familiar with a voltage unbalance in a three-phase power supply, but were unclear about how it applied to a single-phase power supply. (APSP, No. 8 at p.7; Hayward, No. 4 at p.1; Hayward, No. 6 at pp. 6–7) In response, voltage unbalance or imbalance is defined as the largest difference between the average RMS voltage and the RMS value of any single voltage phase divided by the average RMS voltage, usually expressed as a

percentage.<sup>42</sup> Voltage unbalance is a function of multiple phase power supplies and, by definition, does not exist in single-phase power supplies. As there is no voltage unbalance in a single-phase power supply, the requirement to maintain voltage unbalance within  $\pm 3$  percent of the rated value of the motor only applies to pumps with motors driven by a three-phase power supply.

APSP and Hayward also requested that DOE confirm that the voltage unbalance specification of “ $\pm 3$  percent of the rated value of the motor” applies to the rated voltage of the motor. (APSP, No. 8 at p. 7; Hayward, No. 6 at pp. 6–7) In response, DOE agrees that the proposal in the September DPPP 2016 test procedure NOPR could be clarified. DOE understands that motors typically do not have nominal rated voltage unbalance values, similar to the nominal rated frequency and voltage values listed on many motor nameplates. In this case “ $\pm 3$  percent of the rated value of the motor” refers to “the value at which the motor was rated.” That is, the value is referring to the voltage unbalance associated with the rated efficiency of the motor. DOE also notes that, in IEEE Standard 112–2004, “IEEE Standard Test Procedure for Polyphase Induction Motors and Generators,” (IEEE 112–2004) and the Canadian Standards Association (CSA) C390–10, “Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,” (CSA C390–10), which are the test methods incorporated by reference as the DOE test procedure for electric motors, a voltage unbalance of  $\leq 0.5$  percent is required. Therefore, the requirement of “ $\pm 3$  percent of the value at which the motor was rated” can also be interpreted as  $\leq 3.5$  percent for motors rated in accordance with DOE's electric motor test procedure. In this final rule, DOE will specify the voltage unbalance requirement as “ $\pm 3$  percent of value with which the motor was rated.”

During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs, DOE, and Hayward discussed total harmonic distortion (THD). Hayward inquired about differences related to tolerances between the September 2016 DPPP test procedure NOPR and ENERGY STAR and specifically sought indication of whether the tolerances in DOE's proposal were more stringent than ENERGY STAR. (Hayward, Public

<sup>40</sup> EPA. 2013. “ENERGY STAR Program Requirements Product Specification for Pool Pumps—Final Test Method.” Available at: <https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf>.

<sup>41</sup> ENERGY STAR maintains a database of certified products, including pool pumps. See <https://www.energystar.gov/productfinder/product/certified-pool-pumps/results>.

<sup>42</sup> An overview by DOE on voltage unbalance can be found at: [http://energy.gov/sites/prod/files/2014/04/f15/eliminate\\_voltage\\_unbalanced\\_motor\\_systems7.pdf](http://energy.gov/sites/prod/files/2014/04/f15/eliminate_voltage_unbalanced_motor_systems7.pdf).

Meeting Transcript, No. 3 at p. 58) DOE responded during the September 2016 DPPP test procedure NOPR public meeting that ENERGY STAR requires THD to be less than 2 percent and DOE's proposal was less than 12 percent. (DOE, Public Meeting Transcript, No. 3 at p. 59) CA IOUs noted that ENERGY STAR's THD requirements were much more stringent than the proposed DOE requirements and raised questions if current test labs can comply with this value. (CA IOUs, Public Meeting

Transcript, No. 3 at pp. 59–60) Hayward responded that upon initial review, if a manufacturer is already conducting ENERGY STAR testing in-house, that the DOE proposal does not seem more stringent, nor did Hayward believe that the DOE proposal would require any more elaborate equipment. (Hayward, Public Meeting Transcript, No. 3 at p. 60) CA IOUs responded that a different THD value might be necessary in that the DOE's proposal of 12 percent seems unreasonably high, but ENERGY STAR's

requirement of 2 percent seems unreasonably low. (CA IOUs, Public Meeting Transcript, No. 3 at p. 60)

Regarding Hayward's inquiry as to the relative stringency of DOE's proposed power supply characteristics as compared to the ENERGY STAR<sup>43</sup> test procedure for pool pumps,<sup>44</sup> DOE notes that all of DOE's proposed power supply characteristic requirements are equivalent to or less stringent than the existing ENERGY STAR requirements, as shown in Table III.9.

TABLE III.9—COMPARISON OF POWER SUPPLY CHARACTERISTICS REQUIREMENTS PROPOSED IN DOE'S SEPTEMBER 2016 DPPP TEST PROCEDURE NOPR AND IN THE ENERGY STAR TEST METHOD FOR POOL PUMPS<sup>45</sup>

Power supply characteristic	DOE September 2016 DPPP test procedure NOPR proposal	ENERGY STAR
Voltage .....	within $\pm 5$ percent of the rated value of the motor .....	within $\pm 1.0$ percent of the rated value of the motor.
Frequency .....	within $\pm 5$ percent of the rated value of the motor .....	within $\pm 1.0$ percent of the rated value of the motor.
Voltage Unbalance .....	within $\pm 3$ percent of the rated value of the motor .....	N/A.
Total Harmonic Distortion	$\leq 12$ percent .....	$\leq 2.0$ percent.

With regard to CA IOUs comment regarding DOE's proposed tolerance on THD perhaps being too large, DOE notes that the THD tolerance of 12 percent was developed based on reasonable limits that motor systems should be designed to handle. Further, a THD tolerance of 12 percent is widely available on the national electrical grid and, therefore, is not unduly burdensome to attain during testing. DOE discussed this justification, at length, in the January 2016 general pumps test procedure final rule. 81 FR 4086, 4112–4118 (Jan. 25, 2016) For example, regarding limitations on harmonic distortion on the power supply, the AMO publication, "Improving Motor and Drive System Performance" (AMO motor sourcebook) states that electrical equipment is often rated to handle 5 percent THD (as defined in IEEE 519–2014<sup>46</sup>), and notes that motors are typically much less sensitive to harmonics than computers or communication systems.<sup>47</sup> In addition, section 5.1 of IEEE 519–2014 recommends line-to-neutral harmonic voltage limits of 5.0 percent individual harmonic distortion and 8.0 percent voltage THD for weekly 95th percentile short time (10 min) values, measured to the 50th harmonic. The IEEE standard also indicates that daily 99th percentile

very short time (3 second) values should be less than 1.5 times these values.

Hayward also submitted written comments stating that DOE's proposed voltage, frequency, voltage unbalance, and THD requirements are suitable for testing dedicated-purpose pool pumps and were reasonably achievable in existing laboratory environments. (Hayward, No. 6 at p. 7) Additionally, Hayward submitted written comments that the proposed power supply requirements in the September 2016 DPPP test procedure NOPR are in alignment with (or not as stringent as) the power supply requirements for other pool pump industry programs including ENERGY STAR, NSF, and UL. (Hayward, No. 6 at p. 7) Similarly, APSP stated that DOE's proposed power supply requirements were less stringent than the requirements used in DOE motor efficiency testing. (APSP, No. 8 at p. 7) Both APSP and Hayward felt that existing equipment would be more than capable of meeting the proposed requirements. (APSP, No. 8 at p. 7; Hayward, No. 6 at p. 7). Ultimately, for the reasons discussed in this section, DOE adopts requirements in this final rule that when testing dedicated-purpose pool pumps the main power supplied to the motor or controls, if any, must maintain voltage within  $\pm 5$  percent

of the rated value of the motor, frequency within  $\pm 1$  percent of the rated value of the motor, voltage unbalance of the power supply maintained within  $\pm 3$  percent of the value with which the motor was rated, and total harmonic distortion maintained at or below 12 percent throughout the test.

#### f. Measurement Equipment for Testing

Appendix C of HI 40.6–2014, which DOE is incorporating by reference into the DPPP test procedure, specifies the required instrumentation to measure head, speed, flow rate, torque, temperature, and electrical input power to the motor. In the September 2016 DPPP test procedure NOPR, DOE proposes to refer to appendix C of HI 40.6–2014, as incorporated by reference (see section III.E.1), to specify the required instrumentation to measure head, speed, flow rate, and temperature in the DPPP test procedure. 81 FR 64580, 64619–64620 (Sept. 20, 2016). However, DOE noted that for the purposes of measuring input power to the motor or control, as applicable, of DPPP models, the equipment specified in section C.4.3.1, "electric power input to the motor," of HI 40.6–2014 may not be sufficient. Instead, DOE proposed requirements that electrical measurements for determining pump

<sup>43</sup> ENERGY STAR is a joint program of the U.S. Environmental Protection Agency (EPA) and DOE that establishes a voluntary rating, certification, and labeling program for highly energy efficient consumer products and commercial equipment. Information on the program is available at [www.energystar.gov/index.cfm?c=home.index](http://www.energystar.gov/index.cfm?c=home.index).

<sup>44</sup> EPA. 2013. "ENERGY STAR Program Requirements Product Specification for Pool Pumps—Final Test Method. Rev. Jan-2013" <https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf>.

[www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf](http://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf).

<sup>45</sup> EPA. 2013. "ENERGY STAR Program Requirements Product Specification for Pool Pumps—Final Test Method. Rev. Jan-2013" <https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf>.

<sup>46</sup> IEEE. 2014. Standard 519: "IEEE Recommended Practice and Requirements for Harmonic Control in Electric Power Systems." Available at: <https://standards.ieee.org/findstds/standard/519-2014.html>.

<sup>47</sup> DOE EERE. *Improving Motor and Drive System Performance—A Sourcebook for Industry*. February 2014. Available at [www.energy.gov/eere/amo/motor-systems](http://www.energy.gov/eere/amo/motor-systems).

power input be taken using equipment capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency<sup>48</sup> and have an accuracy level of  $\pm 2.0$  percent of the measured value when measured at the fundamental supply source frequency when rating pumps using the testing-based methods or with a calibrated motor. *Id.* These proposed requirements are consistent with other relevant industry standards<sup>49</sup> for measurement of input power to motor and drive systems and the January 2016 general pumps test procedure final rule. 81 FR 4086, 4118–19 (Jan. 25, 2016) DOE notes that the September 2016 DPPP test procedure NOPR contained inconsistent statements with regard to whether the accuracy requirement was with respect to full scale or the measured value. Specifically, the preamble (81 FR 64619–64620) discussed the accuracy requirement with respect to full scale, while the proposed regulatory text discussed accuracy requirements with respect to the measured value (81 FR 64650). The proposed regulatory text contained the correct proposal, which is that electrical measurement equipment must be accurate to  $\pm 2.0$  percent of the measured value. DOE notes that this is consistent with the requirements adopted in the January 2016 general pumps test procedure final rule and is less stringent than the requirements contained in the ENERGY STAR Test Method for Pool Pumps,<sup>50</sup> which requires accuracy of 1.5 percent of the measured value for power measurement.

In response to DOE's proposal, Hayward commented that the manufacturer of the power analyzer within Hayward's lab met the level of accuracy proposed in the September 2016 DPPP test procedure NOPR.

<sup>48</sup> CSA C838–13 requires measurement up to the 50th harmonic. However, DOE believes that measurement up to the 40th harmonic is sufficient, and the difference between the two types of frequency measurement equipment will not be appreciable.

<sup>49</sup> Specifically, DOE identified AHRI 1210–2011, “2011 Standard for Performance Rating of Variable Frequency Drives”; the 2013 version of CSA Standard C838, “Energy efficiency test methods for three-phase variable frequency drive systems”; CSA C390–10, “Test methods, marking requirements, and energy efficiency levels for three-phase induction motors”; and IEC 61000–4–7, “Testing and measurement techniques—General guide on harmonics and interharmonics measurements and instrumentation, for power supply systems and equipment connected thereto” as relevant to the measurement of input power to the motor or control.

<sup>50</sup> EPA. 2013. “ENERGY STAR Program Requirements Product Specification for Pool Pumps—Final Test Method.” Available at: <https://www.energystar.gov/sites/default/files/specs/Pool%20Pump%20Final%20Test%20Method%2001-15-2013.pdf>.

(Hayward, No. 6 at p. 11) APSP also commented that currently existing motor test data acquisition equipment is adequate to meet the tolerance limits proposed by DOE. (APSP, No. 8 at p. 7)

Therefore, for the reasons discussed in this section, DOE adopts that electrical measurement equipment must be capable of measuring current, voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency and having an accuracy level of  $\pm 2.0$  percent of the measured value when measured at the fundamental supply source frequency.

DOE also noted in the September 2016 DPPP test procedure NOPR that HI 40.6–2014 does not contain any requirements for the instruments used for measuring distance. Distance must be measured when determining the self-priming capability of self-priming and non-self-priming pool filter pumps (see section III.G.2). 81 FR 64580, 64620 (Sept. 20, 2016). As such, DOE proposed in the September 2016 DPPP test procedure NOPR to require instruments for measuring distance that are accurate to and have a resolution of at least  $\pm 0.1$  inch to improve consistency and repeatability of test results. *Id.* DOE noted that, although this accuracy requirement is generally applicable, when used in combination with other instruments to measure head, both the accuracy requirements of distance-measuring instruments and the specified accuracies for measurement of differential, suction, and discharge head apply. *Id.*

DOE received no comments related to this proposal. Therefore, in this final rule, DOE requires instruments for measuring distance that are accurate to and have a resolution of at least  $\pm 0.1$  inch.

#### g. Calculation and Rounding Modifications and Additions

DOE notes HI 40.6–2014 does not specify how to round values for calculation and reporting purposes. DOE recognizes that the manner in which values are rounded can affect the resulting WEF, and all WEF values should be reported with the same precision. Therefore, to improve the accuracy and consistency of calculations, DOE proposed in the September 2016 DPPP test procedure NOPR that raw measured data be used to calculate WEF and the resultant value be rounded to the nearest 0.1. 81 FR 64580, 64620 (Sept. 20, 2016). Similarly, DOE proposed that all values of EF, maximum head, vertical lift, and true priming time be reported to the tenths place and all other values be reported to

the hundredths place. 81 FR 64580, 64650 (Sept. 20, 2016).

DOE received no comments related to this proposal. However, DOE notes that the June 2016 DPPP Working Group Recommendations and January 2017 DPPP DFR specify separate standards for self-priming pool filter pumps with rated hydraulic horsepower greater than or equal to 0.711 hp and less than 0.711 hp. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #1 at pp. 1–2; 86 FR 5650, 5743). As such, DOE notes that rated hydraulic horsepower must be reported to the thousandths place, consistent with the precision desired by the DPPP Working Group in their equipment class specifications. Therefore, in this final rule, DOE adopts that all calculations shall be performed with raw measured data; that WEF, EF, maximum head, vertical lift, and true priming time be rounded to the nearest tenths place; that rated hydraulic horsepower be reported to the nearest thousandths place; and all other values be rounded to the hundredths place.

#### F. Representations of Test Metrics

In the September 2016 DPPP test procedure NOPR, DOE stated that manufacturers of equipment that are addressed by the proposed test procedure would have 180 days after the publication of the test procedure final rule to begin using the DOE procedure as the basis for representations. However, DOE clarified that manufacturers would not be required to certify or otherwise make representations regarding the performance of applicable dedicated-purpose pool pumps using the WEF metric until the compliance date of any potential energy conservation standards that DOE might set for dedicated-purpose pool pumps. However, if manufacturers elect to make representations of WEF prior to such compliance date, they will be required to do so using the DOE test procedure. 81 FR 64580, 64627–28 (Sept. 20, 2016).

In the September 2016 DPPP test procedure NOPR, DOE also discussed how other metrics that are outcomes of the DPPP test procedure would also need to be updated to be consistent with the final DPPP test procedure 180 days after publication of the final rule in the **Federal Register**. Specifically, DOE also proposed establishing standardized and consistent methods for determining several DPPP metrics, including DPPP horsepower metrics, EF, pump efficiency, overall efficiency, driver power input, pump power output, and power factor. One hundred and eighty (180) days after the publication of this final rule any representations of those

metrics would also be required to be based on values consistent with the DOE test procedure. DOE notes that some of these test methods and representations were proposed as optional to allow manufacturers to make such representations if they chose to. *Id.*

DOE received many comments related to the representation of efficiency metrics, including use of alternative metrics, the definition of a representation, the impact on voluntary programs, and the timing required to transition to the new test procedure. These comments and DOE's responses are discussed in the following sections III.F.1, III.F.2, III.F.3, and III.F.4.

#### 1. Representations of Primary Efficiency Metrics

As discussed in section III.C, DOE is adopting the WEF as the regulatory metric for defining the energy efficiency of dedicated-purpose pool pumps. Typically, DOE only includes in the test procedure the DOE metric (the metric used for the energy conservation standards), and EPCA requires manufacturers to switch over to use of the DOE metric for representations beginning 180 days of publication of the test procedure final rule. This helps ensure standardization of efficiency representations throughout the industry and eliminates potential confusion in the market place if multiple non-equivalent metrics are used to describe the same piece of equipment. DOE believes that requiring use of the single, standardized DOE metric determined through a public notice and comment process is the most appropriate approach. A single, standardized metric that provides a comprehensive picture of the equipment's energy performance will provide a clear and consistent basis for consumers to compare and select dedicated-purpose pool pumps.

As described in detail in the September 2016 DPPP test procedure NOPR, EF is the metric currently used in the industry to describe the energy performance of dedicated-purpose pool pumps. 81 FR 64580, 64598–64600 (Sept. 20, 2016). EF describes the efficiency of the dedicated-purpose pool pump, in terms of gal/Wh, at a single speed point and on a single system curve. However, there are multiple tested speeds and system curves that can be used to determine EF, resulting in multiple EF values. For example, a single pump can have up to nine different EF values, making selection and comparison of equipment confusing.

Conversely, WEF uses the same measured input data as EF (flow in gallons and input power in W), but

weights the efficiency of the pump at multiple speeds into one comprehensive and consistent metric that better represents the average efficiency of the equipment during typical operation. This makes product comparison and selection more straightforward. During the DPPP Working Group discussions, the Working Group members agreed that the weighted average approach was a good approach to achieve a single energy metric that would be representative of the energy efficiency of dedicated-purpose pool pumps, while allowing for an equitable differentiation and comparison of performance among different DPPP models and technologies and providing the necessary and sufficient information for purchasers to make informed decisions regarding DPPP selection. (Docket No. EERE–2015–BT–STD–0008, No. 38 at pp. 212–213; Docket No. EERE–2015–BT–STD–0008, No. 58 at pp. 170–171 and 178) The DPPP Working Group also agreed that, currently, comparing the multiple EF values was confusing and made equipment comparisons difficult. The DPPP Working Group also stated that some of the EF values did not meaningfully represent the efficiency of the equipment. (Docket No. EERE–2015–BT–STD–0008, No. 38 at p. 133; Docket No. EERE–2015–BT–STD–0008, No. 58 at pp. 170–171)

However, the DPPP Working Group also discussed the importance of the EF metric for making product selections for specific applications or making energy saving calculations in support of utility programs. (Docket No. EERE–2015–BT–STD–0008, No. 38 at p. 133 and 213–214; Docket No. EERE–2015–BT–STD–0008, No. 58 at pp. 167–170 and 174–175) Due to the interest expressed in the use of the EF metric during the DPPP Working Group negotiations, in contrast to typical practice, DOE proposed to allow the representation of two metrics, EF and WEF. Specifically, DOE proposed to include EF as an optional alternative metric in addition to WEF. 81 FR 64580, 64627–64628 (Sept. 20, 2016). DOE notes that the use of this optional additional metric is a unique allowance in this case, a result of a negotiated rulemaking where the industry clearly represented the importance of maintaining the use of the EF metric. DOE provided the DPPP Working Group with an opportunity through the NOPR to formally express their intent to continue using EF as an alternative metric at multiple speeds and/or system curves, in addition to WEF, to describe the energy performance of dedicated-purpose pool pumps.

In the September 2016 DPPP test procedure NOPR public meeting, the CA IOUs expressed support for the ability to test EF at different speeds, in addition to the DOE metric. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 78–79) However, other commenters requested clarification regarding the allowance for the representation of two metrics in DOE's proposal and described how the use of multiple metrics may cause confusion and complicate ratings with other voluntary industry programs. Specifically, during the public meeting and subsequent written comments, APSP, Pentair, and Hayward expressed confusion and concern related to representations of EF, coordination with ENERGY STAR and other entities, and standardization of reported metrics across the industry. (Pentair, Public Meeting Transcript, No. 3 at pp. 8–9, Hayward, No. 6 at p. 1, APSP, No. 8 at p. 2; Pentair, No. 11 at p. 5)

DOE notes that such representations are governed by statute. EPCA requires that, manufacturers of dedicated-purpose pool pumps within the scope of the DPPP test procedure will be required to use the test procedure established in this rulemaking when making representations about the energy efficiency or energy use of their equipment. Specifically, 42 U.S.C. 6314(d) provides that, “[e]ffective 180 days after a test procedure rule applicable to any covered equipment is prescribed . . . , [n]o manufacturer . . . may make any representation . . . respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.”

Therefore, beginning 180 days after publication of this final rule, any representations made with respect to the energy use or efficiency of dedicated-purpose pool pumps subject to testing pursuant to 10 CFR 431.464(b) must be made in accordance with the results of testing pursuant to appendix B. Manufacturers will not be required to certify or make or make other representations regarding the performance of applicable dedicated-purpose pool pumps using the WEF metric until July 19, 2021, the compliance date of energy conservation standards for dedicated-purpose pool pumps. If, however, manufacturers elect to make representations of efficiency prior to July 19, 2021, they will be required to do so using a measurement of the WEF metric derived from use of the DOE test procedure.

Given the confusion regarding the use of the optional metrics expressed by the majority of interested parties, DOE is adopting, in this final rule, modifications to its proposal to ensure consistency with DOE's test procedure in the long term. Specifically, DOE is providing a test procedure to derive an EF metric, but only for representations made before July 19, 2021, the compliance date of any energy conservation standards for dedicated-purpose pool pumps. Thus, in this final rule, DOE is adopting two appendices. The first (appendix B) must be used beginning 180 days after publication of the final rule until July 19, 2021, the compliance date of energy conservation standards and includes both WEF and the optional EF method. However, DOE notes that if appendix B is used to make representations of the optional metric EF, the manufacturer must also make representations of the required metric WEF, such that, as required by EPCA, the representations "fairly disclose the results of testing" under appendix B. (42 U.S.C. 6314(d)).

The second appendix (C) includes only the WEF metric. Manufacturers must make representations in accordance with appendix C on or after July 19, 2021, the compliance date of the adopted energy conservation standards, including when certifying compliance with those standards. As appendix C does not provide a procedure to arrive at an EF metric, after July 19, 2021, representations of EF will no longer be allowed.

Through the use of these two appendices, DOE is clarifying that the industry has until July 19, 2021, the compliance date of adopted energy conservation standards to transition completely to WEF. DOE believes that the transition to use of this one, standardized metric will reduce confusion among manufacturers and in the marketplace. However, prior to July 19, 2021, DOE is allowing manufacturers to continue to make representations using the EF metric, if tested in accordance with the appendix B, during the transition to representations using only the WEF metric derived from the test procedures in appendix C. DOE is allowing this optional continued use of EF until July 19, 2021, to provide the industry with increased time to transition fully to the new WEF metric, due to the interest in maintaining the EF metric expressed by the DPPP Working Group. DOE also notes that use of appendix B is optional and manufacturers may decline to make representations of EF and WEF, or any other DPPP metrics, until July 19, 2021,

when representations must be based on the results of testing under appendix C.

## 2. Definition of Representation

In response to the September 2016 DPPP test procedure NOPR, Hayward requested a definition of the term representation. (Hayward, No. 6 at p. 1) During the NOPR public meeting Hayward also requested that DOE provide an example of what would be a typical representation applied to other regulated products. (Hayward, Public Meeting Transcript, No. 3 at p. 9)

In response, DOE notes that there is no formal definition of representation. However, as noted previously, 42 U.S.C. 6314(d), which establishes the 180-day representation requirements, states that manufacturers, distributors, retailers, and private labelers are prohibited from making "any representation—in writing (including any representation on a label) or in any broadcast advertisement respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing." Therefore, representations include any and all values that are generated by the test procedure, as well as any statement regarding the energy consumption or cost of energy consumed. Representations include, for example, any information included in operation and installation manuals, in marketing materials, on a Web site, or on the equipment label, as well as verbal statements made in broadcast advertisements.

In response to Hayward's request for an example of what would be a typical representation, potentially for a different product or piece of equipment, DOE provided the example at the September 2016 DPPP test procedure NOPR public meeting of a residential refrigerator where any representation of how much electricity the refrigerator consumes made in a manufacturer's literature or on their Web site would need to be made based on the appropriate DOE test procedure for that product. DOE stated that any metrics that come out of the DOE test procedure must be based on testing in accordance with that test procedure. (DOE, Public Meeting Transcript, No. 3 at pp. 9–10). For dedicated-purpose pool pumps, the relevant metrics as proposed were WEF, EF, rated hydraulic horsepower, DPPP nominal motor horsepower, DPPP total horsepower, DPPP service factor, true power factor, and maximum head, as well as pump efficiency, overall (wire-to-water) efficiency, driver power input,

and pump power output (hydraulic horsepower), graphically or in numerical form, and potentially at a variety of speeds or load points.

## 3. Impact on Voluntary and Other Regulatory Programs

Hayward asked whether or not current the current reporting of data (e.g., EF, horsepower, service factor, etc.) to EPA, CEC, and APSP are affected by this rulemaking (and whether DOE would work with those entities to update their standards). (Hayward, No. 6 at p. 1) Pentair also requested clarification regarding whether or not the EF value displayed in the ENERGY STAR database would be subject to DOE test procedures and representation requirements 180 days after publication of the final rule. (Pentair, Public Meeting Transcript, No. 3 at pp. 8–9) CA IOUs were supportive of the DOE DPPP test procedure being incorporated by ENERGY STAR as well as if ENERGY STAR or other organizations wanted to test at different speeds, they could use the DOE test procedure, but specify the speed accordingly. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 78–79)

In response to Hayward and Pentair's comments regarding the reporting of EF, DOE clarifies that, as discussed previously, 180 days after publication of the final rule in the **Federal Register**, all representations of energy and efficiency metrics, including EF, will need to be updated to be consistent with the final DPPP test procedure. This is a statutory requirement of EPCA, not a timeframe set by DOE. DOE understands that manufacturers of pumps likely have historical test data which were developed with methods consistent with the DOE test procedure being adopted in this final rule. DOE notes that it does not expect that manufacturers will need to regenerate all of the historical test data as long as the tested units remain representative of the basic model's current design and the rating remains valid under the adopted method of test for dedicated-purpose pool pumps. If the testing methods used to generate historical ratings for DPPP basic models are substantially different from those adopted in this final rule or the manufacturer has changed the design of the basic model, the representations resulting from the historical methods would no longer be valid.

APSP and Hayward noted that because DOE proposes EF as kgal/kWh, it is not consistent with other programs that require reporting it as gal/Wh, and therefore the same number would be reported with different units. (APSP, No. 8 at p. 9; Hayward, No. 6 at p. 8)

In response, DOE notes that, although the DOE test procedure for EF proposed to use kgal/kWh instead of gal/Wh, these values are numerically equivalent. However, for consistency with previous ratings, in this final rule, DOE is adopting units of gal/Wh for the optional EF test metric.

With regard to coordination with voluntary and other regulatory programs in general, DOE notes that during the Working Group meetings and the NOPR public meeting, it was made clear to stakeholders that not only the industry, but also ENERGY STAR and CEC, would have to transition to the DOE test procedure within 180 days of publication of the test procedure final rule. (Docket No. EERE–2015–BT–STD–0008, No. 54 at pp. 42–43; Public Meeting Transcript, No. 3 at pp. 9–11) On or after this date, representations must be made in accordance with the adopted DOE test procedure. Accordingly, DOE expects that both ENERGY STAR and CEC will transition to DOE's WEF metric and test procedure. DOE will work with ENERGY STAR and CEC to make this transition. However, during this period of transition, manufacturers may still be making representations of EF for other programs and must determine whether their historical test data is valid in accordance with the DOE test procedure or not. After 180 days, all representations, including representations of EF, must be made in accordance with the DOE test procedure. In the case any historical test data is determined not to be valid, that DPPP model must be retested in order to continue making representations of EF.

#### 4. Request for Extension

Hayward requested an extension of the 180 day timeframe for representations to allow manufacturers sufficient time to obtain the necessary resources, equipment, and personnel to respond to DOE's request. (Hayward, No. 6 at p. 1) Pentair and APSP stated that it was impossible to comply with the 180 day requirement for publishing performance and labeling products according to the DOE test procedure, particularly due to the relationship with ENERGY STAR requirements. They also noted that introducing new terms into the market so early would be disruptive. Therefore, they requested that the 180 day requirement be changed to coincide with the compliance date of energy conservation standards. (APSP, No. 8 at p. 2; Pentair, No. 11 at p. 5)

In response to Pentair and APSP's concerns about labeling and introduction of new metrics, DOE did

not propose that products be labeled within the 180 day period (see section III.I). Furthermore, DOE notes that manufacturers may decline to make any representations of WEF, or any other DPPP metrics, until July 19, 2021, meaning that no equipment is required to be rated in accordance with the DOE test procedure within 180 days. EPCA does require, however, that any representation that a manufacturer may choose to make on a label or otherwise must reflect testing under the applicable DOE test procedure, beginning 180 days after publication of this final rule. (42 U.S.C. 6314(d)) In this case, they must make representations of WEF at a minimum, but may choose to continue making representations of EF, reflective of the results of testing in accordance with appendix B, until July 19, 2021.

DOE acknowledges that some DPPP models currently participate in voluntary industry programs, such as ENERGY STAR, that rely on the EF metric. As such, DOE is accommodating the continued use of the EF metric until July 19, 2021 to allow a smooth transition in the industry, as requested by Pentair and APSP. However, as mentioned previously, both ENERGY STAR and CEC are also required to transition to DOE's new WEF metric and test procedure within 180 days. In addition, after July 19, 2021, only representations of WEF will be allowed, as representation of EF would not be reflective of testing under appendix C of the DPPP test procedure. DOE believes this should address Pentair and APSP's concern regarding market confusion with new metrics.

DOE notes that 42 U.S.C. 6314(d)(2) allows manufacturers to petition for an extension of up to another 180 days in the case of undue hardship to the manufacturer. However, because a finding as to undue hardship is particular to a given manufacturer, the petition must be filed by the manufacturer within 60 days of the publication of this final rule, specifying the hardship to the manufacturer that would result from the 180-day requirement, and any extension will be determined by the Secretary on a case-by-case basis. (42 U.S.C. 6314(d)(2))

#### G. Additional Test Methods

In addition to the measurements and calculations necessary to determine WEF, DOE also must establish consistent terminology and measurement methods to categorize the capacity and maximum head of a given dedicated-purpose pool pump, as well as establish whether a given dedicated-purpose pool pump is self-priming. Specifically, as discussed in section

III.D, DOE is establishing different load points and reference curves based on the rated hydraulic horsepower of a given pool filter pump. DOE's standardized and consistent method for determining DPPP capacity is discussed in section III.G.1. As discussed in section III.B.3.a, DOE also is differentiating pool filter pumps based on whether they are self-priming. DOE's test method for determining the self-priming capability of dedicated-purpose pool pumps is discussed in section III.G.2. In addition, waterfall pumps are categorized with respect to the maximum head the pump can produce. DOE's test method for determining maximum head is discussed in section III.G.3.

#### 1. Determination of DPPP Capacity

As discussed in detail in the September 2016 DPPP test procedure NOPR, industry currently uses several terms to characterize the capacity of dedicated-purpose pool pumps, including total horsepower, DPPP motor capacity, nameplate horsepower, rated horsepower, max-rated horsepower, up-rated horsepower, brake horsepower, service factor horsepower, peak power, and hydraulic horsepower. 81 FR 64580, 64620–64623 (Sept. 20, 2016). The DPPP Working Group discussed these terms and recommended standardizing the terminology by referring to pump capacity around the hydraulic horsepower provided by the pump at a specific load point. (Docket No., EERE–2015–BT–STD–0008, No. 56 at pp. 148–173) In addition, the DPPP Working Group recommended that DOE assist in standardizing the testing and rating of dedicated-purpose pool pumps with regard to other typical horsepower metrics. (Docket No. EERE–2015–BT–STD–0008, No. 92 at pp. 319–322) Specifically, the June 2016 DPPP Working Group recommended that DOE should investigate a label that would facilitate proper application and include specified horsepower information. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #9 at p. 5) Section III.G.1.a and section III.G.1.b contain DOE's proposals and the adopted provisions related to rated hydraulic horsepower and other DPPP motor horsepower metrics, respectively.

#### a. Rated Hydraulic Horsepower

In the September 2016 DPPP test procedure NOPR, DOE proposed to consistently refer to and categorize dedicated-purpose pool pumps based on the hydraulic horsepower they can produce at a particular load point, as measured in accordance with the new DPPP test procedure. 81 FR 64580,



64620–64623 (Sept. 20, 2016). In order to have consistent and comparable values of hydraulic horsepower, the DPPP test procedure must also specify a load point at which to determine the hydraulic horsepower. DOE proposed to categorize dedicated-purpose pool pumps based on the hydraulic horsepower determined at maximum speed on the reference curve for each DPPP variety and speed configuration (section III.D) and at full impeller diameter to result in consistent and comparable ratings among DPPP varieties and speed configurations. *Id.*

While hydraulic horsepower (termed pump power output<sup>51</sup>) is defined in HI 40.6–2014, in the September 2016 DPPP test procedure NOPR, DOE proposed to use the term “rated hydraulic horsepower” to specifically identify the measured hydraulic horsepower on the reference curve (*i.e.*, curve C for self-priming and non-self-priming pool filter pumps) or the specified load point (*i.e.*, 17.0 ft or 10.0 gpm for waterfall pumps or pressure cleaner booster pumps, respectively) at the maximum speed and full impeller diameter for the rated pump. 81 FR 64580, 64622 (Sept. 20, 2016). DOE’s goal in proposing this term was to unambiguously specify the pump power characteristic and differentiate it from the general term “hydraulic horsepower” that can be determined at any location on the pump curve. *Id.* In addition, DOE proposed in the September 2016 DPPP test procedure NOPR that the representative value of rated horsepower, for each basic model of dedicated-purpose pool pump, be determined as the mean of the rated hydraulic horsepower for each tested unit measured in accordance with the new DPPP test procedure. *Id.* The test method for determining hydraulic horsepower (pump power output) is described in more detail in section III.E.2.b.

DOE did not receive any comments related to the proposed definition of rated hydraulic horsepower, the proposal to base the characterization of DPPP capacity on rated hydraulic horsepower, or the proposed method for determining representative values of rated hydraulic horsepower. Consequently, DOE is adopting the terminology and test methods proposed

in the September 2016 DPPP test procedure NOPR without modification.

#### b. Other DPPP Motor Horsepower Metrics

DPPP Working Group suggested that DOE assist in standardizing the testing and rating of dedicated-purpose pool pumps with regard to other typical horsepower metrics (Docket No. EERE–2015–BT–STD–0008, No. 92 at pp. 319–322). In the September 2016 DPPP test procedure NOPR, DOE reviewed the terms typically used in the DPPP industry to characterize motor horsepower. 81 FR 64580, 64622 (Sept. 20, 2016). To alleviate any ambiguity associated with rated horsepower, total horsepower, and service factor, DOE proposed, in the September 2016 DPPP test procedure NOPR, the terms “DPPP nominal motor horsepower,” “DPPP motor total horsepower,” and “DPPP service factor.” 81 FR 64580, 64622–64623 (Sept. 20, 2016). The proposed definitions for these terms are as follows:

- *Dedicated-purpose pool pump nominal motor horsepower* means the nominal motor horsepower as determined in accordance with the applicable procedures in NEMA–MG–1–2014.

- *Dedicated-purpose pool pump motor total horsepower* (also known as service factor horsepower) means the product of the dedicated-purpose pool pump nominal motor horsepower and the dedicated-purpose pool pump service factor of a motor used on a dedicated-purpose pool pump based on the maximum continuous duty motor power output rating allowable for the nameplate ambient rating and motor insulation class.

- *Dedicated-purpose pool pump service factor* means a multiplier applied to the rated horsepower of a pump motor to indicate the percent above nameplate horsepower at which the motor can operate continuously without exceeding its allowable insulation class temperature limit. 81 FR 64580, 64622–64623 (Sept. 20, 2016).

The definitions proposed in the NOPR were developed based on the existing industry definitions for these terms. However, the term “dedicated-purpose pool pump nominal motor horsepower” is defined slightly differently than the terms “rated horsepower” or “nameplate horsepower,” which are synonymous in the industry. Specifically, DOE defines DPPP nominal motor horsepower based on the nominal horsepower of the motor with which the dedicated-purpose pool pump is distributed in commerce, as determined

in accordance with the applicable procedures in NEMA MG–1–2014, “Motors and Generators.” *Id.*

In response to DOE’s proposed definitions, CA IOUs were generally supportive of this approach and stated that CEC has similar terms to those proposed in the September 2016 DPPP test procedure NOPR, but noted that CEC uses the term “motor capacity” for consistency with the motor industry, which is synonymous with the total horsepower and service factor horsepower. (CA IOUs, Public Meeting Transcript, No. 3 at p. 66).

DOE acknowledges CA IOUs’ comment and is aware that different organizations use different terms to describe similar quantities. Although DOE is aware that CEC uses the term motor capacity to refer to what DOE is proposing to define as DPPP motor total horsepower, DOE believes the proposed term is more straightforward and widely understood. DOE also notes that Title 20 of the California Code of Regulations defines both the term “capacity of the motor” and “total horsepower” (of an AC motor) as the product of the rated horsepower and the service factor of a motor used on a dedicated-purpose pool pump (also known as service factor horsepower) based on the maximum continuous duty motor power output rating allowable for the nameplate ambient rating and motor insulation class. Cal. Code Regs., tit. 20 section 1602, subd. (g) However, to be consistent with both CEC definitions for the same term, this final rule will adopt the definition with a parenthetical to note that DPPP motor total horsepower is also referred to as service factor horsepower or motor capacity.

Regarding the definition of DPPP nominal motor horsepower, based on response to comment discussed further in this section, DOE is not referencing NEMA MG–1–2014 for the test method to determine DPPP nominal motor horsepower and is instead directly referencing a more simplified method with equivalent burden. As such, DOE’s proposed definition is no longer applicable. DOE believes specifying a test method for determining this value is sufficient and is not adopting a definition of DPPP nominal motor horsepower.

In the September 2016 DPPP test procedure NOPR, DOE also proposed test methods to consistently and unambiguously determine the DPPP nominal motor horsepower, DPPP service factor, and DPPP motor total horsepower. To determine the DPPP nominal motor horsepower for single-phase and polyphase small and medium AC motors, DOE proposed to reference

<sup>51</sup> The term “pump power output” in HI 40.6 is defined as “the mechanical power transferred to the liquid as it passes through the pump, also known as pump hydraulic power.” It is used synonymously with “hydraulic horsepower” in this document. However, where hydraulic horsepower is used to reference the capacity of a dedicated-purpose pool pump, it refers to the rated hydraulic horsepower.

the relevant sections of NEMA MG–1–2014, as summarized in Table III.10. DOE also proposed to incorporate by

reference these sections of NEMA MG–1–2014 into the DPPP test procedure. 81

FR 64580, 64622–64623 (Sept. 20, 2016).

TABLE III.10—SUMMARY OF RELEVANT NEMA MG–1–2014 SECTIONS APPLICABLE TO SMALL AND MEDIUM SINGLE- AND THREE-PHASE AC MOTORS

Characteristic	Single-phase AC motors	Three-phase AC motors
Breakdown Torque .....	Section 10.34 of NEMA MG–1–2014.* .....	Section 12.39 of NEMA MG–1–2014.*
Locked-Rotor Torque .....	N/A .....	Section 12.37 or 12.38 of NEMA MG–1–2014.*
Pull-up Torque .....	N/A .....	Section 12.40 of NEMA MG–1–2014.*
Locked-Rotor Current .....	N/A .....	Section 12.35.1 of NEMA MG–1–2014.*
Slip .....	N/A .....	Section 1.19 of NEMA MG–1–2014.*

\* Based on testing in accordance with section 12.30 of NEMA MG–1–2014.

Similarly, for direct current (DC) motors, including electrically commutated motors, section 10.62 of part 10 of NEMA MG–1–2014, “Horsepower, Speed, and Voltage Ratings,” describes the requirements for determining the nominal horsepower based on the applicable rated load speed and rated voltages for these motors. To clearly specify how DPPP nominal motor horsepower would be determined for DC motors based on the procedures in NEMA MG–1–2014, DOE also proposed to include instructions in the DPPP test procedure that reference the relevant sections of NEMA MG–1–2014. *Id.*

DOE also proposed to base the determination of DPPP service factor on the standardized service factor values in table 12–4 of section 12.51, “Service Factor of Alternating-Current Motors.” For AC motors not covered by table 12–4 of section 12.51 of NEMA MG–1–2014 and for DC motors, DOE proposed assigning a service factor of 1.0, consistent with section 12.51.2 of NEMA MG–1–2014. *Id.*

Finally, DOE proposed that total horsepower would be calculated as the product of the DPPP nominal motor horsepower and the DPPP service factor, both determined in accordance with the

applicable provisions in the DPPP test procedure. *Id.*

In response to DOE’s proposed test methods for the proposed DPPP motor horsepower metrics, Nidec commented that section 10.34 of NEMA MG–1–2014, which DOE proposed to incorporate by reference, applies specifically to general purpose motors, while small electric motors designed for use on dedicated-purpose pool pumps are definite purpose motors that do not follow the design criteria of NEMA MG–1–2014. Instead, Nidec suggested that DOE use equation (4) to determine nominal motor horsepower:

$$P_{nm} = (T \times RPM) \div 5252 \quad (4)$$

Where:

$P_{nm}$  = the nominal total horsepower<sup>52</sup> at full load (in hp),

$T$  = output torque at full load (in lb-ft), and

$RPM$  = the motor speed at full load (in rpm).

Nidec believes that the calculation in equation (4) is a better method for calculation than using the NEMA sections DOE proposed for DPPP motors and stated that equation (4) is the equation Nidec currently uses to rate such motors, which it manufacturers. (Nidec, No. 10 at p. 2). Nidec also inquired as to the test methods DOE proposed to use for DPPP motors. (Nidec, No. 10 at p. 4).

Nidec also commented that the service factor for small electric motors used in the DPPP industry should not follow NEMA section 12.51 of NEMA MG–1–2014 but instead should be established as 1.0 for all DPPP motors.

Nidec noted that this is consistent with the labeling requirements set forth in ANSI/APSP/ICC 15a–2013. (Nidec, No. 10 at p. 3). Finally, Nidec commented that three-phase motors utilized on dedicated-purpose pool pumps are energy efficient and already regulated and, therefore, should not need further testing nor reporting requirements. (Nidec, No. 10 at p. 3).

APSP agreed with Nidec that DPPP motors are typically definite-purpose and do not always align with NEMA on mechanical and electrical performance. Similarly, APSP recommended using equation (4) to calculate nominal motor horsepower and assigning a service factor of 1.0, such that nominal motor horsepower was equivalent to motor total horsepower. (APSP, No. 8 at p. 8).

During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs stated that commercial and industrial motors commonly have service factors of 1.15, where the motor is capable of performing at a higher level than what the nameplate shows. In contrast, in DOE’s proposal of 1.0, the motor will do at best exactly what the

nameplate states. (CA IOUs, Public Meeting Transcript, No. 3 at p. 68) Pentair also commented that the proposal would restrict a manufacturer’s ability to use higher service factor motors for purposes of improved motor life and/or reduction of inventory/SKUs. (Pentair, No. 11 at p. 3). However, Pentair expressed, in its comments, the importance of standardizing and labeling regarding DPPP horsepower metrics and described how the current practice of up-rate and full-rate labeling of similar products causes significant confusion in the market. (Pentair, No. 11 at p. 5). In response to Nidec and APSP’s suggestions regarding the appropriate test methods for determining motor horsepower and service factor, DOE believes the method suggested by Nidec and APSP is sound and, as described by the commenters, represents the methods currently used by the motor industry to determine motor total horsepower for DPPP motors. DOE is also aware that equation (4) is a common method for measuring motor horsepower when speed and torque are known. Specifically, equation

<sup>52</sup> Nidec’s comment defined this term as the “nominal motor horsepower at full load.” However, the rest of the comment describes the value as the motor total horsepower. As Nidec also recommended a service factor of 1.0 (Nidec, No. 10 at pp. 2–3), nominal motor horsepower is equivalent to motor total horsepower and the equation is applicable to both quantities.

(4) is described in NEMA MG-1-2014 (the standard DOE proposed to incorporate by reference for this determination), the IEEE Standard 114-2010, "Test Procedure for Single-Phase Induction Motors"; IEEE Standard 113-1985, "IEEE Guide: Test Procedures for Direct-Current Machines"; and Canadian Standards Association (CSA) C747-2009 (Reaffirmed (RA) 2014), "Energy Efficiency Test Methods for Small Motors."<sup>53</sup>

DOE notes that this method provides a direct measurement of the horsepower provided by the motor at full load, which is consistent with the term DPPP motor total horsepower, as opposed to DPPP nominal motor horsepower as suggested by Nidec and APSP. However, DOE acknowledges that, as Nidec and APSP both suggested using a service factor of 1.0 with this method, the DPPP nominal motor horsepower and DPPP motor total horsepower would be equivalent and either could be determined with the suggested method shown in equation (4). Therefore, determining nominal motor horsepower using equation (4) is technically correct, provided it is used with a service factor of 1.0. Both Nidec and APSP specifically suggested determining DPPP nominal motor horsepower using equation (4), setting DPPP service factor to 1.0, and determining DPPP motor total horsepower as the product of the DPPP nominal motor horsepower and DPPP service factor. (Nidec, No. 10 at p. 4; APSP, No. 8 at p. 8). As noted in the NOPR, determining DPPP motor total horsepower as the product of DPPP nominal motor horsepower and DPPP service factor is also consistent with ANSI/APSP/ICC 15a-2013,<sup>54</sup> ENERGY STAR,<sup>55</sup> and CA Title 20<sup>56</sup> definitions for the term. 81 FR 64580, 64620-64622 (Sept. 20, 2016). As such, DOE is adopting the method suggested by Nidec and APSP as the test method for determining DPPP nominal total horsepower for dedicated-purpose pool pumps subject to the adopted

procedure.<sup>57</sup> As discussed further in this section regarding incorporations by reference, the burden and fundamental procedure associated with the adopted procedure for measuring motor performance are not different from those proposed in the NOPR, but the adopted method provides a simpler, more direct description.

Regarding service factor, DOE appreciates Nidec and APSP's suggestions regarding service factor and agrees that a service factor of 1.0 for all DPPP motors that are subject to the adopted motor horsepower provisions would be more consistent and ensure standardized rating across DPPP models. It also enables to use of the more direct determination of DPPP nominal horsepower adopted in this final rule. Although Pentair requested more flexibility specifically with regard to service factor, Pentair also requested standardization in horsepower ratings. As such, in this final rule, in order to better standardize the motor horsepower ratings as recommended by commenters, DOE is adopting a service factor of 1.0 for all dedicated-purpose pool pumps to which the adopted motor horsepower test methods apply.

Regarding Nidec's statement that a service factor of 1.0 was consistent with ANSI/APSP/ICC 15a-2013, DOE reviewed ANSI/APSP/ICC 15a-2013 and finds that ANSI/APSP/ICC 15a-2013 does not appear to provide any restriction with regard to the service factor of DPPP motors. In fact, ANSI/APSP/ICC 15a-2013 defines several terms, including rated horsepower, total horsepower, and service factor, that indicate service factors greater than 1.0 are quiet common. For example, the definition of service factor references a pump with a rated horsepower of 1.5 hp, a service factor of 1.65, and a total horsepower of 2.475 hp.<sup>58</sup>

In response to CA IOUs comments on the proposed DPPP service factor for DPPP motors, DOE notes that, consistent with CA IOUs observation, the service factor prescribed in table 12-4 of section 12.51, "Service Factor of Alternating-Current Motors," is 1.15 for most AC motors with a nominal horsepower greater than 0.5 horsepower and typical synchronous speeds. However, consistent with section 12.51.2 of NEMA MG-1-2014 and the comments of Nidec and APSP, DOE believes that

a service factor of 1.0 for AC motors not covered by table 12-4 is more appropriate than a service factor of 1.15. In addition, as discussed in the September 2016 DPPP test procedure NOPR, NEMA MG-1-2014 does not provide information regarding service factor for DC motors, as nominal synchronous speeds are typically not applicable to DC motors. Therefore, DOE believes a DPPP service factor of 1.0 is appropriate for DC motors, effectively making the nominal horsepower equivalent to the total horsepower of the dedicated-purpose pool pump, which is consistent with the convention for rating such motors in the motor industry.

However, DOE notes that Nidec recommended applying the suggested methodology for single-phase DPPP motors only. Nidec indicated that three-phase motors sold with dedicated-purpose pool pumps are already subject to DOE's energy conservation standards for polyphase electric motors at 10 CFR 431.25 or 10 CFR 431.446, depending on the size of the motor. (Nidec, No. 10 at p. 3). DOE agrees with Nidec that any polyphase induction motors currently subject to DOE's existing regulations for electric motors or small electric motors are already subject to test procedures that describe how to determine relevant motor performance parameters, including nominal motor horsepower and service factor, in a standardized and consistent manner. Therefore, additional specifications in the DPPP test procedure are not required.<sup>59</sup> For these reasons, in this final rule, DOE is limiting the applicability of the test methods for determining DPPP nominal motor horsepower and DPPP service factor to dedicated-purpose pool pumps that are distributed in commerce with single-phase AC or DC motors, which are not subject to DOE's existing regulations for electric motors or small electric motors.

DOE notes that the test method for determining DPPP motor total horsepower is still applicable to all dedicated-purpose pool pumps, including those distributed in commerce with polyphase AC motors, as NEMA MG-1-2014 does directly define or prescribe unambiguous methods for determining motor total horsepower. In addition, as discussed

<sup>53</sup> DOE notes that the equation in section 6.4 of CSA C&47-2009 (RA 2014) uses a conversion factor of 5254, instead of the value 5252 suggested by NEMA. However, based on DOE's review, DOE believes a conversion factor of 5252 is more accurate and is more consistent with the value listed in other standards.

<sup>54</sup> ANSI/APSP/ICC-15a-2013, American National Standard for Residential Swimming Pool and Spa Energy Efficiency—section 3, "Definitions." Includes Addenda A. ANSI Approved January 9, 2013. The Association of Pool and Spa Professionals and the International Code Council.

<sup>55</sup> ENERGY STAR Program Requirements for Pool Pumps Eligibility Criteria (Version 1.1), section 1.4, "Product Ratings."

<sup>56</sup> Cal. Code Regs., tit. 20 section 1602, subd. (g).

<sup>57</sup> As discussed subsequently in this section, DOE is adopting test methods for determining the motor horsepower characteristics of dedicated-purpose pool pumps that are only applicable to dedicated-purpose pool pumps distributed in commerce with single-phase AC or DC motors.

<sup>58</sup> ANSI/APSP/ICC-15a-2013, section 3, "Definitions."

<sup>59</sup> DOE notes that the existing electric motor and small electric motor regulations reference relevant sections of NEMA MG-1-2014 and are consistent with the test methods proposed in the September 2016 DPPP TP NOPR. As such, consistent with CA IOUs observation, dedicated-purpose pool pumps distributed in commerce with polyphase motors will continue to apply table 12-4 in NEMA MG-1-2014.

further in section III.K.2 and III.I, all dedicated-purpose pool pumps, including dedicated-purpose pool pumps distributed in commerce with polyphase AC motors, are required to report to DOE the DPPP motor total horsepower and include such information on the equipment nameplate.

In adopting Nidec and APSP's recommended test method for determining DPPP nominal motor horsepower, DOE is not referencing NEMA MG-1-2014 as the method for determining DPPP motor total horsepower. However DOE still must adopt specific and standardized test methods for measuring speed and torque of DPPP motors at full load. IEEE Standard 114-2010, "Test Procedure for Single-Phase Induction Motors" (IEEE 114-2010) and IEEE Standard 113-1985, "Test Procedures for Direct-Current Machines" (IEEE 113-1985) describe the general test requirements and methods for determining motor speed and torque at full load for single-phase AC induction motors and DC motors, respectively. DOE notes that these are the test methods referenced in NEMA MG-1-2014, so the burden and

fundamental procedure associated with measuring motor performance are not different from those proposed in the NOPR. However, as the method of determining DPPP nominal motor horsepower suggested by Nidec and APSP and incorporated by DOE is more direct, DOE is incorporating by reference the relevant sections of IEEE 114-2010 and IEEE 113-1985 directly, as opposed to through NEMA MG-1-2014.

In addition, DOE notes that CSA C747-2009 (RA 2014) is another commonly referenced test method for determining motor horsepower that is treated as equivalent to IEEE 114-2010 in DOE's existing small electric motor test procedure. 10 CFR 431.444(b). In DOE's July 2009 small motors test procedure final rule, DOE determined that IEEE 114-2010 and CSA C747-2009 (RA 2014) would produce equivalent ratings. 74 FR 32059, 32065 (July 7, 2009). DOE has reviewed CSA C747-2009 (RA 2014) as compared to IEEE 113-1985 and believes that the standards will also produce equivalent measurements of full load speed and torque, which are the values relevant for this test procedure. DOE understands

that some manufacturers may currently be using CSA C747-2009 (RA 2014) to determine the performance of small motors, including both single-phase AC and DC motors. Therefore, to provide flexibility to manufacturers and consistency with DOE's existing motor regulations, DOE is adopting test provisions that allow for testing in accordance with either the applicable IEEE standard (IEEE 114-2010 for single-phase AC motors or IEEE 113-1985 for DC motors) or CSA C747-2009 (RA 2014). DOE believes that these standards provide the necessary and sufficient methods to determine the torque and rotating speed of the motor at full load for single-phase AC induction motors and DC motors, respectively. Specifically, DOE is adopting the sections specified in the Table III.11 for each standard, which are relevant to measuring speed and torque at full load. In addition, section E.3.2 of both appendix B and C, as adopted in this final rule, states that full-load speed and torque shall be determined based on the maximum continuous duty motor power output rating allowable for the motor's nameplate ambient rating and insulation class.

TABLE III.11—SECTIONS OF IEEE 114-2010 AND IEEE 113-1985 THAT DOE INCORPORATES BY REFERENCE FOR DETERMINING DPPP MOTOR TOTAL HORSEPOWER

Characteristic	IEEE 114-2010	IEEE 113-1985	CSA C747-2009 (RA 2014)
Relevant Scope .....	Single-phase AC Motors.	DC Motors .....	Single-phase AC and DC Motors
Test Conditions .....	Section 4 .....	Section 3.5, 4.1.2, and 4.1.4 (and machine temperature rise shall be some value between 50% and 100% of rated temperature rise, as specified in 5.4.3).	Section 5.2, 5.3, 5.5. 6.1.
Test Requirements .....	Section 3.2 and section 6.	Section 5.4.3.2 (except that curves of torque versus electric power are not required, as only measurement at full load is required).	Section 6.3, 6.4 (except in section (b) the conversion factor shall be 5252), 6.5 (except only measurements at full load are required), and 6.7.1.
Measurement Instruments.	Section 5.2 and 5.3 ....	Section 3.1, 3.4 .....	Section 5.1, 5.4.6, 5.4.7, 5.6.4, 5.6.5, 5.6.6, 6.2.

In responses to Nidec's inquiry regarding the test methods for determining DPPP motor horsepower characteristics, the test methods referenced in NEMA MG-1-2014 were, by extension, proposed to be incorporated by reference as the specific testing requirements for determining motor performance in the September 2016 DPPP test procedure NOPR.

Regarding the scope of the proposed motor horsepower testing requirements, Pentair commented that a loophole could be introduced in replacement DPPP motors are not also subject to these requirements. (Pentair, No. 11 at p. 3).

In response to Pentair's request, DOE notes that the scope of the required DOE test procedure recommended by the DPPP Working Group and proposed by DOE in the September 2016 DPPP test procedure NOPR is limited to dedicated-purpose pool pumps. DOE acknowledges that, in the September 2016 DPPP test procedure NOPR, DOE proposed an optional test method to determine WEF for replacement DPPP motors. 81 FR 64580, 64629 (Sept. 20, 2016). However, in the September 2016 DPPP test procedure NOPR, DOE also described how DOE does not intend to regulate replacement DPPP motors as part of this rulemaking because they do not (by themselves) meet the definition

of a dedicated-purpose pool pump. *Id.* Similar to the optional testing provisions for replacement DPPP motors adopted in this final rule, manufacturers of replacement DPPP motors may opt to apply the provisions for determining DPPP nominal motor horsepower, DPPP service factor, and DPPP motor total horsepower, as applicable, and make representations of these quantities if they so choose. However, as discussed further in section III.J, replacement DPPP motors are not dedicated-purpose pool pumps, and requirements for such equipment were not discussed or recommended by the DPPP Working Group. Therefore, DOE is declining to adopt any required testing provisions or

reporting requirements for replacement DPPP motors in this rulemaking. DOE may address requirements for replacement DPPP motors in a future rulemaking specifically addressing such equipment.

In summary, based on the comments received in response to the September 2016 DPPP test procedure NOPR, DOE is adopting revised test methods for DPPP nominal motor horsepower and DPPP service factor, which are applicable only to dedicated-purpose pool pumps distributed in commerce with single-phase AC motors and DC motors. DOE is also adopting the test method for DPPP motor total horsepower proposed in the September 2016 DPPP test procedure NOPR without modification, which is applicable to all dedicated-purpose pool pumps. DOE believes such standardized rating methods are consistent with the recommendations of the DPPP Working Group, will be beneficial to consumers in selecting and applying the equipment, and are consistent with existing methods used to rate motors today. DOE notes that these standardized horsepower metrics are intended to support labeling provisions for dedicated-purpose pool pumps, which are discussed further in section III.I.

## 2. Determination of Self-Priming Capability

As discussed in section III.B.3.a, DOE proposed separate definitions for self-priming and non-self-priming pool filter pumps based on their capability to self-prime as determined based on testing in accordance with NSF/ANSI 50–2015. In the September 2016 DPPP test procedure NOPR, DOE proposed to

incorporate by reference relevant sections of the NSF/ANSI 50–2015 standard and also specify several modifications and additions to improve repeatability and consistency of the test results. 81 FR 64580, 64623–27 (Sept. 20, 2016). Specifically, DOE proposed to incorporate by reference section C.3 of Annex C of NSF/ANSI 50–2015, which contains the relevant test parameters, test apparatus, and testing instructions for determining the self-priming capability of self-priming and non-self-priming pool filter pumps. *Id.*

To determine the self-priming capability of self-priming and non-self-priming pool filter pumps, DOE proposed in the September 2016 DPPP test procedure NOPR to follow the test method specified in section C.3 of Annex C of NSF/ANSI 50–2015 with several minor modifications to improve test consistency and repeatability, as well as conform with the new definitions for self-priming and non-self-priming pool filter pumps presented in section III.B.3.a. *Id.* First, where section C.3.2, “Apparatus,” and section C.3.4, “Self-priming capability test method,” state that the “suction line must be essentially as shown in annex C, figure C.1” DOE notes that the suction line refers to the riser pipe that extends from the pump suction inlet to the water surface. DOE also proposed in the September 2016 DPPP test procedure NOPR to clarify that “essentially as shown in Annex C, figure C.1” means:

- The centerline of the pump impeller shaft is situated a vertical distance of 5.0 feet above the water level of a water tank of sufficient volume as to maintain a constant water surface level for the duration of the test;

- the pump draws water from the water tank with a riser pipe that extends below the water level a distance of at least 3 times the riser pipe diameter (*i.e.*, 3 pipe diameters); and

- the suction inlet of the pump is at least 5 pipe diameters from any obstructions, 90° bends, valves, or fittings.

*Id.*

Further, DOE noted that NSF/ANSI 50–2015 does not specify where the measurement instruments are to be placed in the test set up. DOE understands that instruments are typically installed at the suction inlet of the pump and therefore, DOE proposed to specify that all measurements of head, flow, and water temperature must be taken at the pump suction inlet. *Id.* It is also important that all measurements are taken with respect to a common reference plane, which DOE proposed should be the centerline of the pump impeller shaft. DOE also proposed that such adjustments be performed in accordance with section A.3.1.3.1 of HI 40.6–2014. *Id.*

In addition, DOE proposed that height, or vertical lift (VL), must be determined from the height of the water to the centerline of the pump impeller shaft. *Id.* In addition to proposing clarifications with regard to the measurement of VL, DOE proposed clarifications on how to correct the value to a standard temperature of 68 °F, a pressure of 14.7 psia, and a water density of 62.4 lb/ft<sup>3</sup>, as shown in equation (5). DOE notes that the definitions proposed in the September 2016 DPPP test procedure NOPR specifies a VL of 5.0 feet:

$$VL = 5.0\text{ft} \times \left( \frac{62.4\text{ lb/ft}^3}{\rho_{\text{test}}} \right) \times \left( \frac{P_{\text{abs,test}}}{14.7\text{psia}} \right) \quad (5)$$

Where:

VL = vertical lift of the test apparatus from the waterline to the centerline of the pump impeller shaft, in ft;  
 $\rho_{\text{test}}$  = density of test fluid, in lb/ft<sup>3</sup>; and  
 $P_{\text{atm,test}}$  = absolute barometric pressure of test apparatus location at centerline of pump impeller shaft, in psia.

81 FR 64580, 64624–25 (Sept. 20, 2016).

In addition, DOE also noted in the September 2016 DPPP test procedure NOPR that section C.3.2 of NSF/ANSI 50–2015 describes the instruments that are required to perform the test, but, with the exception of the time indicator,

does not specify their required accuracy. Subsequently, DOE proposed to apply the accuracy requirements contained in HI 40.6–2014 to the measurement devices noted in NSF/ANSI 50–2015, as detailed in Table III.12. 81 FR 64580, 64625 (Sept. 20, 2016).

TABLE III.12—MEASUREMENT DEVICE ACCURACY REQUIREMENTS FOR MEASUREMENTS DEVICES SPECIFIED IN NSF/ANSI 50–2015

Measurement device	Accuracy requirement	Source
Elapsed Time Indicator .....	±0.1 min .....	NSF/ANSI 50–2015.
Gauge Pressure Indicating Device .....	±2.5% of reading* .....	HI 40.6–2014.
Temperature Indicating Device .....	±0.5 °F .....	HI 40.6–2014.

TABLE III.12—MEASUREMENT DEVICE ACCURACY REQUIREMENTS FOR MEASUREMENTS DEVICES SPECIFIED IN NSF/ANSI 50–2015—Continued

Measurement device	Accuracy requirement	Source
Barometric Pressure Indicating Device .....	±2.5% of reading * .....	HI 40.6–2014.
Height .....	±0.1 inch .....	N/A.

\* The ±2.5 percent requirement applies to discharge, suction, and differential head measurements, as indicated in table 40.6.3.2.3, for values taken between 40 and 120 percent of BEP flow.

DOE also noted in the September 2016 DPPP test procedure NOPR that NSF/ANSI 50–2015 does not specify an instrument for measuring distance and proposed that instruments for measuring distance are accurate to ±0.1 inch, consistent with other requirements for distance-measuring instruments (section III.E.2.f). 81 FR 64580, 64625 (Sept. 20, 2016).

In section C.3.3, “Test conditions,” NSF/ANSI 50–2015 specifies test conditions for both swimming pools and hot tubs/spas. NSF/ANSI 50–2015 specifies test conditions in terms of water temperature and turbidity requirements. DOE notes that the remainder of the DPPP test procedure is to be conducted with “clear water,” as required by HI 40.6–2014. While NSF/ANSI 50–2015 and HI 40.6–2014 contain different requirements, DOE believes they are intended to do the

same thing and result in similar water characteristics. Therefore, to simplify testing requirements and be consistent with the other portions of the DPPP test procedure, in the September 2016 DPPP test procedure NOPR, DOE proposed to require testing of the self-priming capability of pool filter pumps with clear water that is between 50 and 86 °F, as opposed to the existing water temperature and turbidity requirements contained in section C.3.3 of the NSF/ANSI 50–2015 test method. 81 FR 64580, 64625–64626 (Sept. 20, 2016).

Section C.3.4, “Self-priming capability test method,” of NSF/ANSI 50–2015 specifies that “the elapsed time to steady discharge gauge reading or full discharge flow” is to be recorded as the measured priming time (MPT). However, NSF/ANSI 50–2015 does not specify how to determine “steady discharge gauge reading or full

discharge flow.” In the September 2016 DPPP test procedure NOPR, DOE proposed to determine steady discharge gauge and full discharge flow as when the changes in head and flow, respectively, are within the tolerance values specified in table 40.6.3.2.2, “Permissible amplitude of fluctuation as a percentage of mean value of quantity being measured at any test point,” of HI 40.6–2014. 81 FR 64580, 64626 (Sept. 20, 2016). Based on this criteria for stabilization, DOE also proposed that the elapsed time should be recorded when both steady state pressure and flow readings have been achieved. *Id.*

Section C.3.4 of NSF/ANSI 50–2015 then specifies that the true priming time (TPT) is calculated by scaling the MPT based on the relative diameter of the riser pipe and the pump suction inlet according to the following equation (6):

$$\text{TPT} = \text{MPT} \times \left( \frac{\text{pump suction inlet size}}{\text{riser pipe diameter}} \right)^2 \quad (6)$$

As discussed in the September 2016 DPPP test procedure NOPR, DOE noted that, although theoretically correct, testing with different riser pipe diameters could affect the accuracy and repeatability of the results, especially if pipes that are substantially larger or smaller than the pump suction inlet are used. 81 FR 64580, 64626 (Sept. 20, 2016). As a result, DOE proposed that testing of self-priming capability of pool filter pumps that are not already certified with NSF/ANSI 50–2015 be performed with riser pipe that is of the same pipe diameter as the pump suction inlet. As a result, no adjustment of MPT would be required and TPT would be measured directly. *Id.*

Section C.3.4 of NSF/ANSI 50–2015 also specifies that the complete test method must be repeated, such that two TPT values are generated. In addition, section C.3.5 of NSF/ANSI 50–2015 requires that both measurements must be less than 6 minutes or the manufacturer’s specified TPT, whichever is greater. However, as the criteria for TPT established in DOE’s

definitions (see section III.B.3.a) instead reference a TPT of 10.0 minutes, DOE proposed to specify that both test runs result in TPT values that are less than or equal to 10.0 minutes. 81 FR 64580, 64626 (Sept. 20, 2016).

Similarly, section C.3.5 of NSF/ANSI 50–2015 describes the TPT criteria that pumps must meet in order to certify as self-priming under NSF/ANSI 50–2015 and the caption of figure C.1 specifies the VL criteria applicable to the NSF/ANSI 50–2015 test. As noted previously, DOE’s definitions proposed in the September 2016 DPPP test procedure NOPR reference a specific TPT of 10.0 minutes and VL of 5.0 feet. Therefore, DOE proposed to exclude section C.3.5 and the relevant portions of the VL definition in the caption of C.1 to be consistent with DOE’s definition. 81 FR 64580, 64626 (Sept. 20, 2016).

In the September 2016 DPPP test procedure NOPR public meeting, DOE presented the general procedure for the self-priming test. (Public Meeting Presentation, No. 2 at p. 44) During the September 2016 public meeting,

Hayward sought clarification regarding the second step in the overview of the self-priming test procedure DOE provided in the preamble to the September 2016 DPPP test procedure NOPR. Specifically, Hayward sought confirmation that the terminology “shut off and allow pump to drain” did not mean open the pump to atmosphere. (Hayward, Public Meeting Transcript, No. 3 at pp. 73–74)

In response to Hayward’s inquiry, DOE notes that the statement in the September 2016 DPPP test procedure NOPR meant only to shut off the pump and allow all lines to be drained of water, without opening the pump to the atmosphere, as would typically be the case during the NSF/ANSI 50–2015 test. Specifically, in the DPPP test procedure, DOE is incorporating by reference section C.3 of Annex C of NSF/ANSI 50–2015 with the minor modifications discussed above as the test method for determining the self-priming capability of pool filter pumps and all testing must be conducted in accordance with the instructions in those sections.

CEC, in written comments, supported DOE's proposal to use NSF/ANSI 50–2015 to differentiate between self-priming and non-self-priming pool filter pumps. (CEC, No.7 at p. 2) DOE did not receive any other comments suggesting changes to DOE's proposed test method to determine the self-priming capability of pool filter pumps.

Therefore, in this final rule, DOE is adopting the self-priming test method proposed in the September 2016 DPPP test procedure NOPR without modification. This method relies on section C.3 of NSF/ANSI 50–2015 with

several minor clarifications and modifications. However, DOE notes that, as discussed in section III.E.1, in this final rule, DOE is adopting alternative requirements for the test fluid instead of testing with “clear water” as specified in HI 40.6–2014. As such, to be consistent with the remainder of the DPPP test procedure, in this final rule DOE is adopting provisions that testing for self-priming capability be performed with the same test fluid used for all other testing, instead of testing with “clear water” as proposed in the September 2016 DPPP

test procedure NOPR. DOE notes that the characteristics of the test fluid adopted in this final rule are now more consistent with those in NSF/ANSI 50–2015 as well.

Table III.13 provides a summary of DOE's modifications and additions to NSF/ANSI 50–2015 to remove ambiguity from the NSF/ANSI 50–2015 test method, improve the repeatability of the test, and harmonize the test requirements with the other DPPP test procedure requirements contained in this final rule.

TABLE III.13—SUMMARY OF MODIFICATIONS AND ADDITIONS TO NSF/ANSI 50–2015 SELF-PRIMING CAPABILITY TEST

NSF/ANSI 50–2015 section	NSF/ANSI 50–2015 specification	DOE modification/addition
Section C.3.2, “Apparatus,” and Section C.3.4, “Self-priming capability test method”.	“Essentially as shown in Annex C, figure C.1”	More clearly specify the test setup requirements, where VL = 5.0 feet, adjusted to nominal conditions of 14.7 psia and a water density of 62.4 lb/ft <sup>3</sup> .
Section C.3.2, “Apparatus” .....	Measurement Instruments (no accuracy requirements).	Accuracy requirements contained in HI 40.6–2014, table 40.6.3.2.3, as applicable.
Section C.3.3, “Test conditions” .....	Water temperature and turbidity requirements; all measurements at hot tub/spa temperatures unless for swimming pool applications only.	Test with clear water between 50 and 107 °F with ≤15 NTU.
Section C.3.4, “Self-priming capability test method”.	Measure MPT at steady discharge gauge or full discharge flow.	Measure elapsed time at steady state pressure and temperature conditions; MPT is when those conditions were first achieved.
Section C.3.4, “Self-priming capability test method”.	Adjust MPT to TPT based on relative diameter of suction inlet and pipe diameter.	Use pipe of the same diameter as the suction inlet (MPT = TPT).
Section C.3.5, “Acceptance criteria,” and caption of figure C.1.	TPT of 6 minutes or the manufacturer's specified recommended time, whichever is greater and VL of 5.0 feet or the manufacturer's specified lift, whichever is greater.	Excluded; TPT = 10 minutes and VL = 5.0 feet adjusted to nominal conditions of 14.7 psia and a water density of 62.4 lb/ft <sup>3</sup> .

### 3. Determination of Maximum Head

As noted in section III.B.4.a, waterfall pumps are, by definition, pool filter pumps with maximum head less than or equal to 30 feet, and a maximum speed less than or equal to 1,800 rpm. Therefore, in order to unambiguously distinguish waterfall pumps from other varieties of pool filter pumps, DOE must establish a specific and repeatable method for determining maximum head of pool filter pumps. Based on the demonstrated relationship between flow and head, DOE understands the maximum head to be associated with the minimum flow of the pump. However, DOE also understands that pumps cannot always be operated safely or reliably at zero or very low flow conditions. Therefore, in the September 2016 DPPP test procedure NOPR, DOE proposed that for the purposes of differentiating waterfall pumps from other varieties of pool filter pumps, the maximum head of pool filter pumps be determined based on the measured head value associated with the maximum speed and the minimum flow rate at which the pump is designed to operate

continuously or safely. 81 FR 64580, 64627 (Sept. 20, 2016). DOE notes that the minimum flow rate will be assumed to be zero unless otherwise specified in the manufacturer literature. *Id.*

DOE did not receive any comments in response to the proposed test method for determining maximum head. Therefore, in this final rule, DOE is adopting the proposal to determine the maximum head of dedicated-purpose pool pumps as the head associated with the maximum speed and the minimum flow rate at which the pump is designed to operate continuously or safely, which is assumed to be zero unless otherwise specified in the manufacturer literature.

#### H. Energy Factor Test Method

As discussed previously, in section III.F, in the September 2016 DPPP test procedure NOPR, DOE's proposed test procedure contained an optional test method for determining EF at any desired speed on any of the specified optional system curves (*i.e.*, Curve A, B, C, or D), along with the tested speed and the system curve associated with each

energy factor value. 81 FR 64580, 64627–64628 (Sept. 20, 2016).

Regarding the test method for EF, Pentair and APSP both commented that table III.21 in the September 2016 DPPP test procedure NOPR (81 FR 64580, 64628; Sept. 20, 2016) used inconsistent terminology to specify the flow terms for system curves A, B, C, and D and recommended that the terms be reported consistently as shown in table 4 of the September 2016 DPPP test procedure NOPR (*Id.* at 64653). (Pentair, No. 11 at p. 6; APSP, No. 8 at p. 2) DOE has made the correction in this final rule and incorporated the correct table into appendix B.

#### I. Labeling Requirements

In the June 2016 DPPP Working Group recommendations, the DPPP Working Group recommended that DOE consider whether to require a label that would facilitate proper application and include specified horsepower information. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #9 at p. 5) To implement the recommendations of the



DPPP Working Group, DOE proposed in the September 2016 DPPP test procedure NOPR to require labeling of all dedicated-purpose pool pumps for which the DPPP Working Group recommended test procedures. 81 FR 64580, 64628–29 (Sept. 20, 2016). That is, DOE proposed that the labeling requirements be applicable to:

- Self-priming pool filter pumps less than 2.5 rated hydraulic horsepower,<sup>60</sup>
- non-self-priming pool filter pumps less than 2.5 rated hydraulic horsepower,
- pressure cleaner booster pumps, and
- waterfall pumps.

*Id.*

For self-priming pool filter pumps, non-self-priming pool filter pumps, pressure cleaner booster pumps, and waterfall pumps, DOE proposed that each DPPP unit clearly display on the permanent nameplate the following information:

- WEF, in kgal/kWh,
- rated hydraulic horsepower,
- DPPP nominal motor horsepower,
- DPPP motor total horsepower, and
- service factor.

*Id.*

DOE also proposed specific requirements regarding the formatting of required information on the nameplate and the specific terminology that is required to be displayed. DOE proposed that these labeling requirements would be applicable to all units manufactured, including imported, on the compliance date of any potential energy conservation standards that may be set for dedicated-purpose pool pumps. *Id.*

ASAP and NRDC submitted a joint written comment supporting the labeling requirements proposed in the September 2016 DPPP test procedure NOPR. (ASAP and NRDC, No. 12 at p. 2)

Regarding the proposed formatting of the label, Hayward requested clarification regarding the specific details of the label (*e.g.*, font size, etc.). (Hayward, Public Meeting Transcript, No. 3 at pp. 93–94; Hayward, No. 6 at p. 9) APSP also recommended that all labeling details, including font size and label material, comply with UL1081–2016. (APSP, No. 8 at p. 10) Pentair requested that the pool industry be integrally involved in the labeling

efforts, pointing out that details associated with label formatting and sizing can be critical due to other required safety and compliance labeling requirements combined with limited available space. (Pentair, No. 11, at p. 4) Hayward similarly encouraged DOE to allow use of standard industry nomenclature (*i.e.*, “HP” for horsepower and “THP” for total horsepower) due to limited space available on the product for labels. (Hayward, No. 6 at p. 9) Hayward also sought confirmation that the information required may be provided on separate labels/data plates and is not required to be co-located on one label or data plate. (Hayward, No. 6 at p. 9)

Hayward also objected to listing three separate horsepower values saying it will cause confusion and not support the goal of having the correctly sized, most energy efficient pump used in all applications. As an alternative, Hayward support listing only the total horsepower on any DPPP label. (Hayward, No. 6 at p. 9) Similarly, APSP requested that, based on its recommendations regarding horsepower (see section III.G.1.b), only total horsepower and not nominal motor horsepower or service factor be listed on the label, consistent with requirements in ANSI/APSP/ICC 15a–2013. (APSP, No. 8 at pp. 9–10) Nidec commented similarly. (Nidec, No. 10 at p. 5)

APSP and Pentair commented that while use of hydraulic horsepower for the purposes of sizing is acceptable, use of this value on a label would cause significant confusion in the marketplace and recommended it not be included on the pump label.<sup>61</sup> (APSP, No. 8 at pp. 7–8; Pentair, No. 11 at p. 3) Zodiac similarly commented that so much information on the label may cause confusion during field installation and may compromise proper installation of the pump. (Zodiac, No. 13 at p. 3) However, Zodiac did not provide a suggested alternative.

Hayward, APSP, and Zodiac expressed opposition to a requirement that labeling include a specific WEF result, stating that such designation may disadvantage some manufacturers and cause confusion in the marketplace when dissimilar pumps are incorrectly compared. (Hayward, No. 6 at p. 9; APSP, No. 8 at pp. 9–10; Zodiac, No. 13 at p. 3) Zodiac also stated that the WEF result may confuse or contradict ENERGY STAR ratings. (Zodiac, No. 13 at p. 3) Hayward and APSP also

commented that the required label should only state “meets DOE WEF requirement.” (Hayward, No. 6 at p. 9; APSP, No. 8 at p. 9)

APSP and Hayward recommended that all labeling requirements be removed for three-phase products, as they are out of scope of the final ASRAC working group term sheet. (APSP, No. 8 at p. 10; Hayward, No. 6 at p. 9)

As discussed previously, DOE’s proposal in the September 2016 DPPP test procedure NOPR contained details regarding the font size, spacing, and formatting of the required label, as well as when such label would be required to be applied. As proposed in the September 2016 DPPP test procedure NOPR, all orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump’s permanent nameplate. For this reason, DOE believes that it is not necessary to specify that the labeling requirements comply with UL1081–2016, as requested by APSP, or to have additional industry involvement beyond the comment period on the NOPR, as requested by Pentair, given that the manufacturers already have the option to individually determine the details of the label formatting. In response to Hayward’s suggestion regarding use of common industry abbreviations, DOE notes that the use of “hp” for horsepower was already allowed in DOE’s proposed labeling requirements. However, in light of Hayward’s comments, DOE has modified its proposal to also allow for the abbreviation of total horsepower as THP.

Given the modified requirements for service factor and motor total horsepower discussed in section III.G.1.b, DOE agrees with Hayward, APSP, and Nidec, that DPPP nominal motor horsepower and DPPP service factor do not need to be on the label. In addition, DOE agrees with APSP and Pentair that, while hydraulic horsepower is necessary in certification reporting and for compliance with standards, this information is not used by consumers and does not need to be on the label.

With regard to Hayward, APSP, Zodiac’s opposition to including the WEF value on the label, DOE believes that it is especially important to clearly and consistently communicate the performance of dedicated-purpose pool pumps using the DOE metric in order to provide customers with standardized, comparable information to inform purchasing decisions and is retaining the requirement to include the WEF

<sup>60</sup> DOE notes that the DPPP Working Group only recommended standards for single-phase self-priming pool filter pumps less than 2.5 rated hydraulic horsepower. However, the DPPP Working Group recommended that the test procedure and reporting requirements would still be applicable to single- and three-phase self-priming pool filter pumps. Therefore, DOE believes it is appropriate to apply the proposed labeling requirements to three-phase pumps.

<sup>61</sup> Note that separately APSP presented a recommendation for required nameplate information that did include rated hydraulic horsepower. (APSP, No. 8 at pp. 9–10)

value on the DPPP label. With regard to Zodiac's comment regarding the consistency of WEF and ENERGY STAR EF information, DOE responds that, as discussed in section III.H, as of 180 days after the publication of this final rule all representations of WEF, EF, and other representations of dedicated-pool pump performance must be made in accordance with the adopted DOE test procedure and, therefore, any EF values will be consistent with the tested WEF result for that pool pump in that they will be based on the same test data. However, regarding the confusion between EF and WEF values, DOE is clarifying in this final rule that, as of the compliance date of any energy conservation standard for dedicated-purpose pool pumps, all manufacturers and rating programs must transition to the new WEF metric and representations of EF will no longer be allowed. DOE believes this will resolve the confusion Zodiac is concerned with. Representations of EF and WEF are discussed in more detail in section III.H.

Therefore, in this final rule DOE is adopting labeling provisions that require dedicated-purpose pool pumps subject to the test procedure to be labeled only with WEF and DPPP motor total horsepower. In response to Hayward's request that the required information not be required to be co-located on one label or data plate, DOE believes, given the reduced labeling requirements adopted in this final rule as compared to the NOPR proposal, that it is entirely reasonable to require that these values appear on the pump's permanent nameplate.

In response to APSP and Hayward's recommendation that labeling requirements not apply to three-phase products, DOE notes that this proposal is not consistent with the recommendations of the DPPP Working Group. The June 2016 DPPP Working Group recommendations only specified that standards should not apply to three-phase self-priming pool filter pumps. (Docket No. EERE-2015-BT-STD-0008, No. 82 Recommendations #3 at p. 2) Therefore, DOE believes that requiring labels for three-phase pumps is consistent with requiring them to be subject to the test procedure and reporting requirements, as recommended by the DPPP Working Group.

#### *J. Replacement DPPP Motors*

DOE understands that DPPP motors typically require replacement more frequently than DPPP bare pumps and, thus, replacement DPPP motors are often distributed in commerce to be paired with an existing, appropriate

DPPP bare pump in the field. DOE does not intend to regulate replacement DPPP motors, because they do not (by themselves) meet the definition of a dedicated-purpose pool pump. However, DOE believes that end-users and manufacturers may benefit from having a method to determine an applicable WEF for replacement DPPP motors. This method could allow replacement motor manufacturers to label their products and/or utilities or efficiency programs to encourage the sale of replacement DPPP motors, which could maintain or increase the savings of the dedicated-purpose pool pump, as installed in the field.

For those reasons, DOE proposed in the September 2016 DPPP test procedure NOPR an optional method to determine the WEF for replacement DPPP motors. 81 FR 64580, 64629 (Sept. 20, 2016). Specifically, under this method, the replacement motor would be paired with an appropriate DPPP bare pump and the combination would be subject to the DOE test procedure for that dedicated-purpose pool pump, based on the DPPP variety and speed configuration. *Id.*

In the September 2016 DPPP test procedure NOPR, DOE recognized that replacement DPPP motors may be offered for sale or advertised to be paired with multiple DPPP bare pumps. Furthermore, each combination of a DPPP motor and a DPPP bare pump may have a different WEF, as each bare pump may affect the WEF rating. Therefore, DOE proposed in the September 2016 DPPP test procedure NOPR that the WEF for each replacement DPPP motor and bare pump pairing be determined separately. However, consistent with DOE's treatment of all equipment, DOE would allow manufacturers to group similar replacement motor-bare pump pairings within a given replacement DPPP motor rating to minimize testing burden, while still ensuring that the rating is representative of minimum efficiency or maximum energy consumption of the group. DOE also proposed that replacement DPPP motor manufacturers would be required to make a statement, along with any advertised WEF value, regarding the specific DPPP bare pump to which the WEF value applies. If no specific DPPP bare pumps were listed in the manufacturer literature or otherwise along with any WEF representation, then the WEF value would be assumed to be applicable to any and all possible DPPP bare pumps. *Id.*

During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs stated that if the worst performing pump method were to be utilized for

replacement motors, the bare pumps considered would have to be specified in order to determine which was the worst performing. (CA IOUs, Public Meeting Transcript, No. 3 at p. 80) As such, CA IOUs proposed that if manufacturers test the replacement motors, the test report or result include the range of products that were included in the test. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 82–84)

DOE acknowledges CA IOUs' concern in unambiguously identifying the replacement DPPP motor and bare pump combination on which any WEF value was based. However, as DOE is proposing this as an optional procedure, DOE did not propose any standard or reporting requirements for replacement DPPP motors. In addition, the manufacturer of the replacement DPPP motor may be different than the manufacturer of the dedicated-purpose pool pump. For this reason, DOE does not believe that including such information in the list of optional information DPPP manufacturers may submit when certifying products to DOE would be appropriate. As reporting of replacement DPPP motor WEF information would have to be done as a separate certification report and is not based on compliance with any standard, DOE does not believe collecting such information is warranted at this time. The purpose of the procedure is simply to provide a standardized way to determine WEF for replacement DPPP motors.

ASAP, CA IOUs, CEC, and NRDC commented to support the inclusion of this optional test method for DPPP replacement motors. (ASAP and NRDC, No. 12 at p. 2; CA IOUs, No. 9 at p. 2; CEC, No. 7 at p. 2) ASAP and NRDC and CEC stated that the test method could provide data to guide consumers and support utility and efficiency programs that seek to improve the efficiency of dedicated-purpose pool pumps already in use. (ASAP and NRDC, No. 12 at p. 2; CEC, No. 7 at p. 2)

In written comments, Pentair also supported the optional test method for DPPP replacement motors. However, Pentair stated its belief that the DPPP replacement motor testing should be mandatory, to protect against pool owners pairing low efficiency replacement motors with kit pumps. (Pentair, No. 11 at p. 4) CA IOUs also believe that a national standard is needed for DPPP replacement motors. (CA IOUs, No. 9 at p. 2)

Conversely, in written comments, APSP, Hayward, and Nidec opposed DOE's proposed optional test method for replacement DPPP motors. (APSP, No. 8 at pp. 10–11; Hayward, No. 6 at

p. 9; Nidec, No. 10 at p. 6) Hayward noted that such motors were not discussed by the DPPP Working Group. (Hayward, No. 6 at p. 9) Hayward and Nidec also believe that the methodology presented by DOE is not practical and does not ensure compliance. (Hayward, No. 6 at p. 9; Nidec, No. 10 at p. 6) Nidec suggested that replacement DPPP motors be regulated through an expansion in small motor regulations. (Nidec, No. 10 at p. 6)

DOE appreciates the support of ASAP, CA IOUs, CEC, and NRDC. In response to Pentair and CA IOU's request to adopt requirements for replacement DPPP motors, DOE understands that there is a potential for pool owners or installation contractors to purchase and pair a pump wet end with a low-efficiency replacement motor. However, DOE notes that mandatory requirements for DPPP replacement motors are outside the scope of this rulemaking, as this rulemaking pertains only to pumps as defined in 10 CFR 431.462. DOE proposed an optional test method for replacement motors because of this limitation on rulemaking scope. DOE notes that in the future it could consider mandatory requirements for replacement DPPP motors as part of a rulemaking specifically addressing such motors.

DOE understands Hayward's and Nidec's concerns and agrees that this specific proposal was not discussed at length by the DPPP Working Group. However, DOE reiterates that the test method contained in the September 2016 DPPP test procedure NOPR is an optional test method that manufacturers of DPPP motors may use at their discretion; there is no associated certification or compliance criteria for replacement DPPP motors. That is, replacement DPPP motors would not be required to meet any energy conservation standard set for dedicated-purpose pool pumps. The purpose of the test method is solely to provide standardized information to consumers regarding the efficiency and performance of replacement DPPP motors and provide an opportunity for efficiency programs to incentivize the application of more efficient replacement DPPP motors. In response to Hayward's and Nidec's concern that the test method is impractical, DOE believes that the proposed test method presents a reasonable path to determine the representative WEF score for replacement DPPP motors and notes that Hayward did not provide an alternative suggestion. In response to Nidec's suggestion that replacement DPPP motors be regulated through rules crafted specifically for small motors,

DOE notes that, as stated previously, there are no regulatory requirements pertaining to the optional motor test method. Rather, the optional test method proposed for DPPP motors is intended to provide information to consumers and efficiency incentive programs regarding which motors will conserve energy in a DPPP-specific application, and DOE believes this information would not be made available through small motor regulations. As noted previously, this does not preclude DOE from considering mandatory requirements for replacement DPPP motors as part of a rulemaking specifically addressing such motors.

Hayward also recommended clarifying that replacement motors identical to the original motor that was used to test and qualify the DPPP model (only varying in nomenclature for marketing purposes, such as service part number) should be permitted to make representations of WEF when sold for use with the specific bare pump, without the need for additional testing. (Hayward, No. 6 at p. 9) DOE agrees with Hayward's suggestion. DOE believes that so long as the testing of a given DPPP motor and bare pump pair was performed consistent with DOE's test procedure for replacement DPPP motors, the rating will be accurate. As such, the resultant WEF score can be applied to the tested replacement DPPP motor when offered for sale with the tested DPPP bare pump and would be identical to that applied to the DPPP model comprised of that DPPP motor and bare pump.

#### *K. Certification and Enforcement Provisions for Dedicated-Purpose Pool Pumps*

DOE must provide uniform methods for manufacturers to determine representative values of energy- and non-energy-related metrics, for each basic model. See 42 U.S.C. 6314(a)(2). These values are used when making public representations and when determining compliance with prescribed energy conservation standards. DOE proposed in the September 2016 DPPP test procedure NOPR that DPPP manufacturers use a statistical sampling plan consistent with the sampling plan for pumps that is currently specified at 10 CFR 429.59 to determine representative values of WEF and other energy-related metrics. 81 FR 64580, 64629 (Sept. 20 2016). Manufacturers would use these sampling plans to determine the representative values of WEF and other metrics necessary to demonstrate compliance with the adopted energy

conservation standards for dedicated-purpose pool pumps. In addition, DOE commonly specifies enforcement procedures that DOE uses to verify compliance of a basic model. Sections, III.K.1, III.K.2, and III.K.3 discuss DOE's sampling plan, certification requirements, and enforcement provisions for dedicated-purpose pool pumps, respectively.

#### *1. Sampling Plan*

DOE provides, in subpart B to 10 CFR part 429, sampling plans for all covered equipment. For dedicated-purpose pool pumps, DOE proposed in the September 2016 DPPP test procedure NOPR to adopt statistical sampling plans for WEF, EF, and other energy-related metrics similar to those adopted for pumps. 81 FR 64580, 64630 (Sept. 20, 2016). These sampling plans generally require a sample of sufficient size such that the representative value of WEF, EF, or any other energy consumption metric of a DPPP basic model is less than or equal to the lower of: (A) The lower 95 percent confidence limit divided by 1.05 or (B) the mean of the sample. DOE also proposed similar provisions for quantities, such as pump input power, for which consumers would favor lower values. See 10 CFR 429.59(a)(1)(ii).

In addition to energy-related metrics, DOE also noted that the rated hydraulic horsepower, DPPP nominal motor horsepower, DPPP motor total horsepower, service factor, and true power factor are important characteristics for dedicated-purpose pool pumps that must be reported for each DPPP basic model based on the sampling plan discussed above. Therefore, DOE also proposed that DPPP nominal motor horsepower, DPPP motor total horsepower, service factor, and true power factor for each DPPP basic model be determined based on the mean of the applicable test results, for each metric, from all the tested units that serve as the basis for the rating for that basic model. 81 FR 64580, 64630 (Sept. 20, 2016).

In written comments, Hayward and APSP requested clarification of sampling plan and record keeping requirements for certain motor characteristics. Specifically, APSP and Hayward asked if DOE expects DPPP manufacturers to establish, maintain, and retain underlying test data for nominal motor horsepower, motor total horsepower, and motor service factor for 2 years from the date on which the model is no longer distributed in commerce or if this information would be the responsibility of the individual motor manufacturers. (APSP, No. 8 at p.

9; Hayward, No. 6 at pp. 7–8) In addition, as noted in section III.H, Hayward expressed concern over DOE's requirements being in conflict with other industry programs, especially those regarding determination of EF. (Hayward, No. 6 at p. 1)

In response to Hayward, DOE notes that while motor manufacturers may conduct testing of motors, it is the responsibility of the DPPP manufacturer to retain the underlying test data. As discussed in section III.G.1.b, DOE is adopting test methods for determination of motor horsepower characteristics consistent with those currently used in the industry. However, given the suggestion from interested parties that DOE only require listing DPPP motor total horsepower on the label (see section III.I), DOE is withdrawing the proposal to establish sampling plans for DPPP nominal motor horsepower and DPPP service factor and adopting a sampling plan for DPPP motor total horsepower only.

Regarding potential conflict with industry programs, which DOE believes relates primarily to the sampling plan (as other provisions are quantitatively consistent), in this final rule, DOE limits the sampling plan to only metrics necessary for DOE's test procedure, standard, and labeling requirements (*i.e.*, WEF, rated hydraulic horsepower, and DPPP motor total horsepower). DOE has removed the sampling plan requirements for EF and other motor horsepower metrics. DOE is adopting the other sampling provisions proposed in the September 2016 DPPP test procedure NOPR without modification.

In written comments, APSP asked whether small modifications to the "basic model" require new samples to be tested, and if so, if there is a defined threshold regarding what change would require a new sample to be tested. (APSP, No. 8 at pp. 10–11) DOE believes that APSP is asking about how changes to an individual model's design impact the represented value for a basic model. If any design changes to an individual model that is part of a basic model result in a more consumptive or less efficient represented value, then the individual model must be retested and the represented value must be revised based on the results of the retesting.

## 2. Certification Requirements

Paragraph (b) of 10 CFR 429.59 contains the certification requirements for certain styles of pumps for which DOE adopted test procedures and standards in the January 2016 general pumps test procedure and ECS final rules. 81 FR 4086 (Jan. 25, 2016); 81 FR 4368 (Jan. 26, 2016). Because dedicated-

purpose pool pumps are a style of pump, DOE proposed in the September 2016 DPPP test procedure NOPR to amend 10 CFR 429.59 to include the reporting requirements for dedicated-purpose pool pumps. 81 FR 64580, 64630–64632 (Sep. 20, 2016). Specifically, DOE proposed that the general certification report requirements contained in 10 CFR 429.12 would apply to dedicated-purpose pool pumps as they do to other styles of pumps, including general pumps. However, because dedicated-purpose pool pumps have a unique test procedure and metric from general pumps, DOE proposed unique certification requirements for dedicated-purpose pool pumps that require manufacturers to supply certain additional information to DOE in certification reports to demonstrate compliance with any energy conservation standards that DOE may set. *Id.*

Specifically, DOE proposed that the following items be included in certification reports and made public on DOE's Web site:

- WEF in kilogallons per kilowatt-hour (kgal/kWh);
- rated hydraulic horsepower in horsepower (hp);
- maximum speed of rotation in revolutions per minute (rpm);
- dedicated-purpose pool pump nominal motor horsepower in horsepower (hp);
- dedicated-purpose pool pump motor total horsepower in horsepower (hp);
- dedicated-purpose pool pump service factor (dimensionless);
- the speed configuration for which the pump is being rated (*i.e.*, single-speed, two-speed, multi-speed, or variable-speed);
- for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps, the maximum head in feet; and
- for self-priming and non-self-priming pool filter pumps: The vertical lift and true priming time for the DPPP model and a statement regarding whether the pump is certified with NSF/ANSI 50–2015. *Id.*

In the June 2016 DPPP Working Group recommendations, the DPPP Working Group also recommended that DOE require reporting of true power factor at all applicable test procedure load points in the public information provided in the certification report for all dedicated-purpose pool pumps to which the test procedure is applicable (*i.e.*, self-priming and non-self-priming pool filter pumps, waterfall pumps, and pressure cleaner booster pumps). (Docket No. EERE–2015–BT–STD–0008,

No. 82, Recommendation #7 at p. 4) As such, DOE proposed that, for all dedicated-purpose pool pumps to which the test procedure is applicable, true power factor be reported at all applicable test procedure load points in the certification report and be made public on DOE's Web site. 81 FR 64580, 64630–64632 (Sep. 20, 2016).

In addition, as discussed in section III.B.7, the DPPP Working Group recommended specific prescriptive requirements for dedicated-purpose pool pumps distributed in commerce with freeze protection controls to ensure freeze protection controls on dedicated-purpose pool pumps only operate when necessary and do not result in unnecessary, wasted energy use. Specifically, the DPPP Working Group recommended that all dedicated-purpose pool pumps distributed in commerce with freeze protection controls be shipped either:

- (1) With freeze protection disabled or
- (2) with the following default, user-adjustable settings:
  - a. The default dry-bulb air temperature setting is no greater than 40 °F; and
  - b. The default run time setting shall be no greater than 1 hour (before the temperature is rechecked); and
  - c. The default motor speed shall not be more than ½ of the maximum available speed.

(Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4)

Relatedly, the DPPP Working Group recommended that, in order to certify compliance with such a requirement, DPPP manufacturers be required to make a statement certifying compliance to the applicable design requirement and make available publicly as part of their literature the details by which they have met the applicable design standard. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6B at p. 4) The DPPP Working Group specifically recommended that, as part of certification reporting, manufacturers must include the default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm). (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4) Therefore, consistent with recommendations of the DPPP Working Group, DOE proposed that, for dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled, the certification report also include the default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in

rpm). 81 FR 64580, 64630–64632 (Sep. 20, 2016).

The DPPP Working Group also recommended that DOE include a verification procedure in case there was ever an issue regarding whether a product distributed in commerce actually had such features. (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6A at p. 4) The verification test is discussed in more detail in section III.K.3.

Finally, for integral cartridge-filter and sand-filter pool pumps, the DPPP Working Group recommended DOE consider only a prescriptive standard, which requires such pumps be distributed in commerce with pool pump timers. (Docket No. EERE–2015–BT–STD–0008, No. 51, Recommendation #2B at pp. 1–2) Relatedly, the DPPP Working Group also recommended a definition for pool pump timer that describes the specific features and operational characteristics that applicable pool pump timers must contain in order to comply with the prescriptive standard. The recommended definition defines pool pump timer as a pool pump control that automatically turns off a dedicated-purpose pool pump after a run-time of no longer than 10 hours. As such, for these DPPP varieties, DOE proposed that the certification report must contain the maximum run-time of the pool pump control with which the integral cartridge-filter or sand-filter pump is distributed in commerce. 81 FR 64580, 64630–64632 (Sep. 20, 2016).

In addition to the required elements, DOE recognizes that other DPPP characteristics may provide useful information to inform consumers or support programs related to dedicated-purpose pool pumps. To provide additional information to consumers and the market place, DOE proposed in the September 2016 DPPP test procedure NOPR that the following information may optionally be included in certification reports and, if included, would be made public:

- Calculated driver power input and flow rate at each load point  $i$  ( $P_i$  and  $Q_i$ ), in horsepower (hp) and gallons per minute (gpm), respectively; and/or
- Energy factor at any desired speed on any of the specified optional system curves (*i.e.*, Curve A, B, C, or D), along with the tested speed and the system curve associated with each energy factor value. 81 FR 64580, 64631–32 (Sept. 20, 2016).

Although useful to consumers and the public, DOE recognizes that manufacturers may incur additional burden conducting the testing for and reporting of these additional metrics.

DOE reiterates that the reporting of these additional metrics will be optional and at the discretion of the manufacturer.

In response to DOE's proposed reporting requirements, ASAP and NRDC submitted written comments in support of the certification requirements proposed in the September 2016 DPPP test procedure NOPR. (ASAP and NRDC, No. 12 at p. 2) DOE appreciates the support of ASAP and NRDC.

During the September 2016 DPPP test procedure NOPR public meeting, Hayward inquired if they have a pump that meets acceptable NSF priming criteria, how this should be reported along with the WEF value. (Hayward, Public Meeting Transcript, No. 3 at p. 74) Additionally, in written comments, Hayward and APSP commented that the vertical lift and true priming time fields should only be applicable to self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015. (Hayward, No. 6 at p. 10; APSP, No. 8 at p. 11)

As noted in the September 2016 DPPP test procedure NOPR, for self-priming and non-self-priming pool filter pumps, the certification report is required to include the vertical lift and true priming time for the DPPP model and a statement regarding whether the pump is certified with NSF/ANSI 50–2015. However, in light of Hayward and APSP's concern, DOE recognizes that these requirements are only necessary and relevant for self-priming pool filter pumps. In addition, consistent with Hayward and APSP's request, DOE agrees that a statement that the self-priming pool filter pump is certified with NSF/ANSI 50–2015 is sufficient to demonstrate compliance with DOE's definition for self-priming pool filter pump. Therefore, in this final rule, DOE is modifying the certification reporting requirements such that only self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015 need provide the vertical lift and true priming time for the DPPP model.

In written comments, Hayward and APSP requested that DOE explain why maximum head (“dead head”) is listed and recommended removing it, as they did not see the need to list it. (Hayward, No. 6 at p. 10; APSP, No. 10 at p. 11) In response, DOE clarifies that maximum head is necessary to differentiate waterfall pumps from self-priming and non-self-priming pool filter pumps. As described in section III.B.4.a, section III.G.3, and the September 2016 DPPP test procedure NOPR, waterfall pumps are, by definition, pool filter pumps with maximum head less than or equal to 30 feet, and a maximum speed

less than or equal to 1,800 rpm.

Therefore, in order to unambiguously distinguish waterfall pumps from other varieties of pool filter pumps, DOE established a specific and repeatable method for determining maximum head of pool filter pumps (discussed in section III.G.3). DOE requires reporting of the maximum head, determined in accordance with the test procedure for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps, to ensure that such pumps are appropriately categorized into the correct equipment class.

Hayward and APSP also recommended that, for dedicated-purpose pool pumps with freeze protection controls shipped disabled, the default dry-bulb air temperature setting, default run time setting, and default motor speed setting should not have to be reported. (Hayward, No. 6 at p. 10; APSP, No. 10 at p. 11) In response, DOE notes that Hayward and APSP's suggestion is consistent with the proposal in the September 2016 DPPP test procedure NOPR. 81 FR 64580, 64645 (Sept. 20, 2016). As such, in this final rule, DOE is adopting the proposal in the September 2016 DPPP test procedure NOPR that in the certification report all dedicated-purpose pool pumps must provide a statement regarding if freeze protection is shipped enabled or disabled, but only dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled must provide the default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm).

During the September 2016 DPPP test procedure NOPR public meeting, CA IOUs recommended clarifying that the maximum run time for integrated cartridge-filter and sand-filter pumps referred to the maximum run time without resetting the timer. (CA IOUs, Public Meeting Transcript, No. 3 at p. 90) In response, DOE acknowledges CA IOUs concern that the maximum run time in the field could be extended by resetting the timer. However, DOE believes that the maximum run time of the model is the maximum time interval for which the timer can be set to run and that it is implied that such does not account for resetting of the timer, as it is a physical and unambiguous characteristic of the equipment. Therefore, DOE agrees with CA IOUs regarding the intent of the statement, but does not believe such clarification is necessary.

APSP and Hayward also requested confirmation that the test procedure to determine EF is optional and neither it

nor data relating to it will be required to be provided or certified to DOE. (APSP, No. 8 at p. 9; Hayward, No. 6 at p. 8) Similarly, Zodiac also commented that optional items, such as EF, pump efficiency, overall efficiency, driver power input, and/or pump power output, should remain optional and up to the manufacturer to present. (Zodiac, No. 13 at p. 3)

Regarding APSP, Hayward, and Zodiac's comments with respect to EF and other optional tested values (*i.e.*, pump efficiency, overall efficiency, driver power input, and/or pump power output), DOE reiterates that the EF test procedure proposed was optional in that manufacturers may decline to make any representations of EF, but that if made, all representations of relevant metrics, including EF, would need to be based on the DOE test procedure 180 days after publication of this final rule in the **Federal Register**. However, EF, pump efficiency, overall efficiency, driver power input, and/or pump power output are not required to be reported to DOE.

In addition, as discussed in section III.F, DOE received several comments from interested parties regarding the testing and representation of energy factor and consistency with other programs. To respond to the concerns of interested parties and clarify the applicability of DPPP metrics, DOE, in this final rule, is adopting two appendices that are applicable before (appendix B) and on or after (appendix C) July 19, 2021, the compliance date of the adopted energy conservation standards for this equipment. As a result of the confusion regarding representations of energy factor and the lack of comments supporting the optional reporting of energy factor to DOE, DOE is not adopting the proposal to optionally list any tested energy factor values in the certification report submitted to DOE. Specifically, DOE is not including EF at any desired speed on any of the specified optional system curves (*i.e.*, Curve A, B, C, or D), along with the tested speed and the system curve associated with each energy factor value in the certification report.

DOE did not receive any other comments or suggestions regarding the certification reporting requirements for dedicated-purpose pool pumps. As such, DOE is adopting, in this final rule, the certification reporting requirements as proposed in the September 2016 DPPP test procedure NOPR, with the exception of the optional listing of energy factor as discussed above. DOE is also clarifying the applicability of the certification requirements that are only applicable to certain styles of pumps for

which DOE adopted test procedures and standards in the January 2016 general pumps test procedure and ECS final rules. 81 FR 4086 (Jan. 25, 2016); 81 FR 4368 (Jan. 26, 2016). DOE notes that, as specified in paragraph (a) of 10 CFR 429.12, the certification requirements for covered products and equipment, including those discussed in this final rule, are only applicable to equipment subject to an applicable energy conservation standard set forth in 10 CFR part 430 or 431. Therefore, the certification requirements established in this final rule will only be required on and after July 19, 2021, the compliance date for energy conservation standards for dedicated-purpose pool pumps.

### 3. Enforcement Provisions

Enforcement provisions govern the process DOE will follow when performing its own assessment of basic model compliance with standards, as described under subpart C of 10 CFR part 429. Specifically, subpart C describes the notification requirements, legal processes, penalties, specific prohibited acts, and testing protocols related to testing covered equipment to determine or verify compliance with standards. 10 CFR 429.102–429.134. DOE notes that the same general enforcement provisions contained in subpart C of 10 CFR part 429 will be applicable to dedicated-purpose pool pumps.

Related to enforcement testing of dedicated-purpose pool pumps, as specified in 10 CFR 429.110(e), DOE proposed in the September 2016 DPPP test procedure NOPR to conduct the applicable DPPP test procedure, to determine the WEF for tested DPPP models. 81 FR 64580, 64632 (Sept. 20, 2016). In addition, DOE proposed to use, when determining performance for a specific basic model, the enforcement testing sample size, calculations, and procedures laid out in appendix A to subpart C of 10 CFR part 429 for consumer products and certain high-volume commercial equipment. These procedures, in general, provide that DOE will test an initial sample of at least 4 units and determine the mean WEF value and standard error of the sample. DOE will then compare these values to the WEF standard level, once adopted, to determine the compliance of the basic model or if additional testing (up to a total of 21 units) is required to make a compliance determination with sufficient confidence. DOE also proposed to clarify that the provisions at 10 CFR 429.110(e)(5), which are applicable to general pumps subject to the January 2016 general pumps test

procedure final rule, are not applicable to dedicated-purpose pool pumps. *Id.*

In addition, when determining compliance of any units tested for enforcement purposes, DOE proposed in the September 2016 DPPP test procedure NOPR to adopt provisions that specify how DOE would determine the rated hydraulic horsepower at maximum speed on the reference curve for determining the appropriate test method and standard level for any tested equipment (if applicable). Specifically, DOE proposed to perform the same test procedure for determining the rated hydraulic horsepower at maximum speed on the reference curve specified by the test procedure for each DPPP variety (see section III.D) on one or more units of each model selected for testing. DOE proposed that, if the rated hydraulic horsepower determined through DOE's testing (either the measured rated hydraulic horsepower for a single unit sample or the average of the measured rated hydraulic horsepower values for a multiple unit sample) is within 5 percent of the certified value of rated hydraulic horsepower, then DOE will use the certified value of rated hydraulic horsepower as the basis for determining the standard level for tested equipment. However, if DOE's tested value of rated hydraulic horsepower is not within 5 percent of the certified value of rated hydraulic horsepower, DOE will use the arithmetic mean of all the rated hydraulic horsepower values resulting from DOE's testing when determining the standard level for tested equipment. 81 FR 64580, 64632 (Sept. 20, 2016).

In addition, DOE proposed to establish similar procedures for relevant quantities necessary to differentiate the varieties of pool filter pumps: Self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps. Specifically, to differentiate waterfall pumps, DOE proposed an enforcement testing procedure for the maximum head value. Similarly, to differentiate self-priming and non-self-priming pool filter pumps, DOE proposed performing the self-priming capability test and determine the vertical lift and true priming time of one or more tested units. DOE proposed tolerances of 5 percent on the certified values in both of these instances as well. *Id.*

Pentair responded that without audit and enforcement, the economic effect from the potential costs related to testing (see section IV.B) could be low as manufacturers will not feel compelled to re-test dedicated-purpose pool pumps. (Pentair, No. 11 at p. 4) DOE responds that DOE does conduct

enforcement testing, as discussed in this section. If a product is suspected of not meeting the minimum energy conservation standard, DOE has enforcement mechanisms to verify the equipment performance in relation to the standard. DOE's burden assessment contained in section IV.B reflects the assumption that manufacturers will conduct testing and certify equipment in accordance with the test procedure adopted in this final rule.

DOE did not receive any other comments related to DOE's proposal related to enforcement testing provisions for WEF, rated hydraulic horsepower, maximum head, or self-priming capability. As such, DOE is adopting the enforcement testing provisions for WEF, rated hydraulic horsepower, and maximum head, as proposed in the September 2016 DPPP test procedure NOPR. However, with regard to the enforcement provisions to verify the self-priming capability of non-self-priming pool filter pumps and self-priming pool filter pumps not certified with NSF/ANSI 50–2015, DOE notes that, in response to comments from interested parties, DOE is removing the requirement to report the vertical lift and true priming time of non-self-priming pool filter pumps, as discussed in section III.K.2. As DOE's proposed enforcement testing provisions included comparing the tested values to the values of vertical lift and true priming time certified by the manufacturer to determine the validity of the certified values, DOE must adopt different criteria for non-self-priming pool filter pumps, as they will not have certified values to which DOE can compare the test results. Instead, DOE is adopting validity criteria for non-self-priming pool filter pumps based on the values of vertical lift and true priming time referenced in the definition of non-self-priming pool filter pump. That is, DOE will compare the values of vertical lift and true priming time obtained from the tested unit(s) to the values of vertical lift and true priming time referenced in the definition of non-self-priming pool filter pump (*i.e.*, 5.0 feet and 10.0 minutes, respectively). DOE will continue to apply the same tolerance of 5 percent so that any non-self-priming pool filter pump that is not capable of priming to a vertical lift of 5.0 feet with a true priming time of less than or equal to 9.5 minutes (10.0 minutes—5 percent) will continue to be treated as a non-self-priming pool filter pump, as certified by the manufacturer. DOE notes that vertical lift and true priming time are related variables, such that the 5 percent tolerance need only be applied to true

priming time as the independent variable.

In addition, based on DPPP Working Group recommendations (Docket No. EERE–2015–BT–STD–0008, No. 82, Recommendation #6B at p. 4), DOE also proposed in the September 2016 DPPP test procedure NOPR a procedure to verify the presence and operation of any freeze protection controls distributed in commerce with any applicable dedicated-purpose pool pump. The proposed procedure starts by installing the DPPP unit in a test stand in accordance with HI 40.6–2014 with the pump powered on but not circulating water (*i.e.*, the controls are active and the flow or speed are set to zero). The temperature measured by the freeze protection temperature control would then be gradually decreased by  $1 \pm 0.5$  °F every 5.0 minutes, starting at  $42 \pm 0.5$  °F until the pump freeze protection controls initiate water circulation or  $38 \pm 0.5$  °F, whichever occurs first. The freeze protection ambient temperature reading and DPPP rotating speed, if any, would be recorded after each reduction in temperature and subsequent stabilization. 81 FR 64580, 64633 (Sept. 20, 2016).

Under DOE's proposed test procedure, if the DPPP freeze protection controls do not initiate water circulation at a temperature of  $38 \pm 0.5$  °F, as measured by the freeze protection ambient temperature sensor, the test would conclude and the dedicated-purpose pool pump would be deemed compliant. If the freeze protection controls initiate water circulation, the temperature would be increased to  $42 \pm 0.5$  °F and the dedicated-purpose pool pump would be allowed to run for at least 30.0 minutes. After 30.0 minutes, the freeze protection ambient temperature and rotating speed, if any, would be recorded again. If the dedicated-purpose pool pump initiated water circulation at a temperature greater than 40 °F, if the dedicated-purpose pool pump is still circulating water after 30.0 minutes of operation at  $42 \pm 0.5$  °F, or if rotating speed for freeze protection is greater than one-half of the maximum rotating speed of the DPPP model, as certified by the manufacturer, that DPPP model would be deemed to not comply with the stated design requirement for freeze protection controls. *Id.*

In written comments, ASAP and NRDC expressed appreciation that DOE developed a verification procedure that can be used to verify whether a DPPP shipped with freeze protection controls meets the freeze protection certification requirements promulgated in this rule. (ASAP and NRDC, No. 12 at pp. 2–3)

DOE appreciates the support of ASAP and NRDC.

During the September 2016 DPPP test procedure NOPR public meeting, Pentair raised a concern that the default run-time setting in the freeze protection requirements recommended by the DPPP Working Group is no greater than an hour, but the test procedure stops after 30.0 minutes. (Pentair, Public Meeting Transcript, No. 3 at p. 101)

In response, DOE agrees with Pentair that the time requirement in the freeze protection enforcement testing procedure should be 60.0 minutes, rather than the 30.0 minutes proposed in the September 2016 DPPP test procedure NOPR, consistent with the recommendations of the DPPP Working Group. Therefore, in this final rule, DOE is updating the procedure to allow 60.0 minutes of operation before the freeze protection ambient temperature and rotating speed, if any, will be recorded again.

In written comments, APSP and Pentair questioned why the dry-bulb temperature was selected as the measurement to determine temperature. APSP and Pentair commented that few if any of the products in the market use dry-bulb temperature sensors to initiate freeze protection controls. (APSP, No. 8 at p. 4; Pentair, No. 11 at p. 2) DOE responds that DOE researched the typical controls and sensing mechanisms of freeze protection controls when developing the test method. Based on DOE's research, the three largest pool pump manufacturers produce freeze protection systems that sense the ambient air temperature and (if freeze protection is enabled) activate the freeze protection mode when the ambient air temperature falls below a certain threshold.<sup>62</sup> On May 19, 2016, the DPPP Working Group discussed using the dry-bulb air temperature as one of the key metrics for specifying the characteristics of freeze protection controls, and no members of the group opposed the use of dry-bulb temperature. (Docket No. EERE–2015–BT–STD–0008, No. 101 at pp. 105–107) Then, the DPPP Working Group recommended that manufacturers include dry-bulb air temperature in their certification reports. (Docket No. EERE–2015–BT–STD–0008, No. 82 Recommendation #6A at p. 4) DOE

<sup>62</sup> Several operation manuals for pool control systems note that freeze protection is triggered by air temperature. See, for example: Pentair. IntelliTouch Quick-Start Manual. 2004. [www.pentairpool.com/pdfs/IntelliTouchQuickStartIG.pdf](http://www.pentairpool.com/pdfs/IntelliTouchQuickStartIG.pdf). Hayward. Pro Logic Operation Manual. 2010. [www.hayward-pool.com/pdf/manuals/PLTPM-PL-PS-x&PL-PS-x-VOperationsOct08&Later.pdf](http://www.hayward-pool.com/pdf/manuals/PLTPM-PL-PS-x&PL-PS-x-VOperationsOct08&Later.pdf).



believes that the manufacturers' installation and operation manuals, the DPPP Working Group discussions, and the DPPP Working Group recommendations provide ample justification for using dry-bulb air temperature as a certification requirement for dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled. Further, DOE is not aware of other temperature-based criteria that are relevant to the activation of freeze protection controls at this time and Pentair did not provide an alternative recommendation in their comments. If freeze protection controls are developed that activate based on alternative temperature criteria (other than dry-bulb air temperature), DOE may consider modifying the enforcement test and any prescriptive freeze protection control requirements at that time.

CA IOUs also raised questions related to the temperature measurement apparatus and whether the measurement would be impacted by heat created by the DPPP motor. (CA IOUs, Public Meeting Transcript, No. 3 at pp. 101–102)

In response, DOE notes that, as described in the September 2016 DPPP test procedure NOPR, several methods are allowed to control and record the temperature registered by the freeze protection ambient temperature sensor. This can be accomplished, depending on the specific location and configuration of the temperature sensor, by exposing the freeze protection thermocouple to a specific temperature by, for example, submerging the thermocouple in a water bath of known temperature, adjusting the ambient air temperature of the test chamber and measuring the temperature directly at the freeze protection ambient temperature sensor location, or other means to simulate and vary the ambient temperature registered by the freeze protection temperature sensor(s). While DOE acknowledges that, as noted by CA IOUs, the temperature measured by the freeze protection ambient temperature sensor may be slightly higher than the bulk ambient temperature due to localized heating of the sensor from the DPPP motor and controls, DOE believes this is representative of operation in the field and the test procedure is designed to accommodate this. Based on the recommendations of the DPPP Working Group, the freeze protection enforcement test is designed to identify DPPP freeze protection controls that initiate water circulation when the freeze protection ambient temperature sensor registers 40.0 °F or higher, regardless of the bulk ambient

temperature (which may be slightly cooler than 40.0 °F). DOE notes that this is accomplished regardless of the method used to measure and control the freeze protection ambient temperature sensor and enables the variety of methods discussed previously. If only the bulk ambient temperature were measured, the pump would need to be placed in an environmental chamber and the temperature of the chamber controlled in order to test the freeze protection controls operation. In summary, DOE believes that the proposed temperature measurement methods provide a representative measure of the ambient temperature measured by the freeze protection controls and minimizes burden associated with the test by providing a variety of options for measuring and controlling the temperature registered by the freeze protection ambient temperature sensor. DOE also believes the proposal is consistent with the intent of the DPPP Working Group recommendations. Therefore, while DOE acknowledges CA IOUs concern, DOE is adopting the specifications regarding measurement of the temperature registered by the freeze protection ambient temperature sensor as proposed in the September 2016 DPPP test procedure NOPR.

APSP and Hayward, in written comments, recommended clarifying that enforcement testing of freeze protection is not applicable for units shipped with the freeze protection disabled. (APSP, No. 8 at p. 11; Hayward, No. 6 at p. 10) In response, DOE clarifies that the provisions are primarily intended to verify that the default settings for dedicated-purpose pool pumps shipped with freeze protection control enabled are within the thresholds recommended by the DPPP Working Group. However, DOE notes that the freeze protection control enforcement test could also be applied to dedicated-purpose pool pumps shipped with freeze protection control disabled to verify the fact that the controls were, in fact, disabled. In either case, any dedicated-purpose pool pumps tested under the freeze protection control enforcement test provisions should not be altered from their as-shipped settings. DOE is clarifying, in this final rule, that dedicated-purpose pool pumps must be tested in the “as-shipped control settings” when applying the freeze protection control enforcement test. DOE notes that the actual design requirements would be established in any ECS rulemaking for dedicated-purpose pool pumps and that this verification procedure would only be

necessary if and when any such requirements are established.

APSP and Hayward also recommended clarifying that the vertical lift and true priming time for enforcement testing of the self-priming capability test should be 6 minutes or the manufacturers recommended prime time, as permitted by NSF/ANSI 50–2015. (APSP, No. 8 at p.11; Hayward, No. 6 at p. 10)

In response, DOE acknowledges that, as defined, self-priming pool filter pumps that are certified with NSF/ANSI 50–2015 would have been tested based on the criteria in NSF/ANSI 50–2015 that allow for some amount of manufacturer discretion with regard to the tested vertical lift and true priming time. Specifically, NSF/ANSI 50–2015 allows a vertical lift of 5 feet or the manufacturers specified lift, whichever is greater, and a true priming time not to exceed 6 minutes or the manufacturers recommended time, whichever is greater. However, DOE notes that DOE's self-priming capability enforcement testing provisions are fundamentally designed to evaluate the self-priming capability of a pool filter pump not certified to NSF/ANSI 50–2015 as self-priming to verify the appropriate equipment class is applied to each DPPP model. As such, the criteria adopted in the definitions of self-priming and non-self-priming pool filter pump (see section III.B.3.a) are most applicable.

In addition, DOE notes that, as discussed in the DPPP Working Group, DOE's specified criteria of a vertical lift of 5.0 feet and true priming time of 10.0 minutes were meant to ensure that any pump certified to NSF/ANSI 50–2015 as a self-priming pump would inherently meet DOE's criteria for self-priming pumps. That is, based on NSF/ANSI criteria, any pump that was certified as self-priming would have a vertical lift of at least 5.0 feet, which would also comply with DOE's requirement. Regarding the true priming time, as NSF/ANSI 50–2015 allows for a true priming time of 6 minutes or the manufacturers specified time, whichever is greater, it is possible that a pump could be certified to NSF/ANSI 50–2015 with a priming time greater than 10.0 minutes and still be qualified as a self-priming pump. However, the DPPP Working Group noted on several occasions that the majority of existing self-priming pool filter pumps have true priming times less than 10.0 minutes. (Docket No. EERE–2015–BT–STD–0008, No. 95 at pp. 20–38, 110–113, and 119–128; Docket No. EERE–2015–BT–STD–0008, No. 79 at pp. 154–192) However, DOE would only apply the self-priming

capability enforcement test to pool filter pumps that are not certified as self-priming with NSF/ANSI 50–2015 and, therefore, DOE's requirements of 5.0 feet and 10.0 minutes are the applicable thresholds.

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

##### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://energy.gov/gc/office-general-counsel>.

DOE reviewed this final rule, which establishes a new test procedure for dedicated-purpose pool pumps, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE concludes that this final rule will not result in a significant impact on a substantial number of small entities, as it would not, in and of itself, require the use of the adopted test procedure. That is, any burden associated with testing dedicated-purpose pool pumps in accordance with the requirements of this test procedure is accounted for in the related January 2017 DPPP DFR, as promulgation of energy conservation standards is what ultimately requires use of the adopted test procedure. 82 FR 5650, 5738–40. On this basis, DOE certifies that this test procedure final rule would not have a “significant

economic impact on a substantial number of small entities,” and the preparation of a regulatory flexibility analysis is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review under 5 U.S.C. 605(b).

##### 1. Review of DPPP Manufacturers

As presented in the September 2016 DPPP test procedure NOPR, DOE conducted a focused inquiry into manufacturers of equipment covered by this rulemaking. During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved the review of individual company Web sites and marketing research tools (*e.g.*, Dun and Bradstreet reports, Manta, Hoovers) to create a list of companies that manufacture pumps covered by this rulemaking. Using these sources, DOE identified 21 distinct manufacturers of dedicated-purpose pool pumps. 81 FR 64580, 64637.

DOE notes that the Regulatory Flexibility Act requires analysis of, in particular, “small entities” that might be affected by the rule. For the DPPP manufacturing industry, the SBA has set a size threshold, which defines those entities classified as “small businesses” for the purpose of the statute. DOE used the SBA's size standards to determine whether any small entities would be required to comply with the rule. The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

DPPP manufacturers are classified under NAICS 333911, “Pump and Pumping Equipment Manufacturing.” The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category. To determine the number of DPPP manufacturers that are small businesses and might be differentially affected by the rule, DOE reviewed these data to determine whether the entities met the SBA's definition of a small business manufacturer of dedicated-purpose pool pumps and then screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a “small business,” are foreign-owned and operated, or are owned by another company. Based on this review, DOE identified five companies that would be considered small manufacturers by the

SBA definition in terms of the number of employees.

DOE requested comment on this estimate in the September 2016 DPPP test procedure NOPR. 81 FR 64580, 64637 (Sept. 20, 2016). Hayward commented that they had no means to confirm the accuracy of this value. (Hayward, No. 10 at pp. 10–11) Further analysis of small businesses was conducted as part of the Manufacturer Impact Analysis discussed in the January 2017 DPPP DFR. 82 FR 5650, 5726.

##### 2. Burden of Conducting the DOE DPPP Test Procedure

Although DOE maintains that this test procedure has no incremental burden associated with it when viewed as a stand-alone rulemaking, DOE recognizes that DPPP energy conservation standards were adopted in the January 2017 DPPP DFR. 86 FR 5650, 5743. Given the DPPP ECS rulemaking and the potential testing manufacturers may elect to undertake prior to July 19, 2021, the compliance date of adopted standards, DOE estimated the cost of developing certified ratings for covered DPPP models.

In the September 2016 DPPP test procedure NOPR, DOE estimated the cost to test and certify a DPPP basic model, and the total certification cost for each manufacturer, based on input from manufacturers and independent research. DOE estimated the cost for both (a) testing units in house and (b) testing units at a third-party testing facility. Using the assumption that each manufacturer rates 15 basic models on average, DOE developed testing costs for manufacturers that perform in-house testing ranging from \$1,000 to \$1,350 per basic model. This included up to \$1,000 in capital costs, and up to \$350 in labor costs to perform the DPPP tests to comply with DOE's testing requirements. For testing units at third party test labs, DOE estimated the cost to be \$11,000 per basic model. 81 FR 64580, 64635–64637 (Sept. 20, 2016).

In response to the September 2016 DPPP test procedure NOPR, APSP, Hayward, and Pentair commented that DOE's estimated capital cost for in-house testing is too low. APSP, Hayward, Pentair, and Zodiac stated that a manufacturer starting out should expect to spend between \$50,000 and \$100,000 for equipment suitable for testing. (APSP, No. 8 at p. 11; Hayward, No. 6 at p. 10; Pentair, No. 11, at p. 4; Zodiac, No. 13 at p. 3) In addition, Hayward, APSP, and Zodiac stated that the estimated time to complete a test of a DPPP basic model is between 12 and 14 hours. (APSP, No. 8 at p. 11;

Hayward, No. 6 at p. 10; Zodiac, No. 13 at p. 3)

DOE notes that APSP, Hayward, Pentair, and Zodiac did not provide additional detail regarding the basis for their estimates or why they are higher than DOE's estimates. However, DOE recognizes that the assumptions in the September 2016 DPPP test procedure NOPR only accounted for the capital cost of acquiring the necessary equipment and did not account for the additional labor associated with setting up and commissioning any new testing facility. DOE believes that, including the additional labor estimates, a figure of \$50,000 to \$100,000 may be appropriate. Therefore, DOE has revised the worst-case burden estimate, which was previously estimated as \$43,800, using the information provided by manufacturers. Using the same assumption from the September 2016 DPPP test procedure NOPR that each manufacturer will rate 15 basic models on average and the estimated capital costs provided by Hayward, APSP, Pentair, and Zodiac, the worst-case burden estimate ranges from \$3,333 to \$6,666 per basic model. In addition, adjusting the testing time to 14 hours and using a labor rate with fringe benefits of \$56.42 per hour,<sup>63</sup> the total labor costs are \$790 per basic model. In total, using estimates from Hayward, APSP, Pentair, and Zodiac, the per basic model testing costs range from \$4,123 to \$7,456.

However, as discussed in the September 2016 DPPP test procedure NOPR, many DPPP manufacturers already have existing testing capabilities and likely would not incur the full burden on constructing completely new test facilities. Specifically, DOE estimated a more representative burden estimate of \$15,000 for manufacturers that may be required to acquire new power measurement equipment and power conditioning equipment to comply with the proposed test procedure requirements. However, DOE noted that the costs could be as low as \$0. 81 FR 64580, 64635–64637 (Sept. 20, 2016). DOE notes that these representative burden estimates are consistent with the comments of APSP, Hayward, and Pentair that many of the requirements regarding test equipment and test conditions adopted in the DOE test procedure are consistent with (or less stringent than) those already in use in manufacturer's test labs (see section III.E.2.e and III.E.2.f). (APSP, No. 8 at p.

7; Hayward, No. 6 at pp. 7, 11; Pentair, No. 11 at p. 4) In addition, in response to comments from interested parties, DOE is making several modifications in this test procedure final rule to further align testing requirements with existing industry programs and, therefore, reduce testing burden for manufacturers (see section III.E.2, III.H, and III.K.1). However, Pentair pointed out that manufacturers may need to upgrade capacity to certify all applicable DPPP models in accordance with the regulation. (Pentair, No. 11 at p. 4) While DOE understands that manufacturers may incur cost to certify DPPP models in accordance with any energy conservation standard that may be set, there is no requirement to certify any or all models associated with this test procedure final rule. As such, DOE is assessing the burden associated with certifying DPPP models in accordance with this test procedure and the impact on manufacturers in the Manufacturer Impact Analysis in the associated energy conservation standard (Docket No. EERE-2015-BT-STD-0008). Specifically, in the Manufacturer Impact Analysis in the energy conservation standard, DOE is including the highest cost per basic model testing cost estimate to prevent underestimating testing burden to the industry. DOE determined that the per basic model test cost at third-party test labs (\$11,000 per model, as estimated in the September 2016 DPPP test procedure NOPR) is greater than the per basic model test cost estimate from Hayward, Pentair, and APSP. Therefore, in the ECS Manufacturer Impact Assessment, DOE assumes that all manufacturers test 15 basic models at third-party test labs at a cost of \$11,000 per basic model.

In the September 2016 DPPP test procedure NOPR, DOE also estimated that manufacturers incur testing burden every time a new basic model is introduced. DOE estimated that manufacturers introduce or significantly modify the basic model every 5 years. Pentair APSP, and Zodiac responded that significant changes in basic models are not common and the 5 year estimate is low. APSP commented that 5 years is the minimum time for a manufacturer to make changes to basic models, but it could be as much as 10 years. (Pentair, No. 11 at p. 4; APSP, No. 8 at p. 12; Zodiac, No. 13 at p. 3) DOE appreciates the comments from the interested parties and concludes that, based on the updated testing time of 14 hours discussed previously, ongoing testing costs would be approximately \$790 per manufacturer to certify new models. However, DOE reiterates that this cost

would not be required until the compliance date of any energy conservation standard that may be adopted for such equipment.

### *C. Review Under the Paperwork Reduction Act of 1995*

All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and industrial equipment. 10 CFR part 429, subpart B. In an application to renew the OMB information collection approval for DOE's certification and recordkeeping requirements filed in January 2015, DOE included an estimated burden for manufacturers of pumps in case DOE ultimately sets energy conservation standards for this equipment, and OMB approved the revised information collection for DOE's certification and recordkeeping requirements. 80 FR 5099 (Jan. 30, 2015). In the January 2016 general pumps ECS final rule, DOE established energy conservation standards and reporting requirements for certain categories of pumps and estimated that public reporting burden for the certification for pumps, similar to other covered consumer products and commercial equipment, would average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 81 FR 4368, 4428 (Jan. 26, 2016). As dedicated-purpose pool pumps are a specific style of pump and the testing and certification requirements adopted in this final rule are similar to those established for general pumps in the January 2016 general pumps test procedure final rule, DOE believes that the estimated reporting burden of 30 hours would also be applicable for dedicated-purpose pool pumps. 81 FR 4086 (Jan. 25, 2016). DOE notes that, although this test procedure rulemaking discusses recordkeeping requirements that are associated with executing and maintaining the test data for this equipment (see section III.K.1), certification requirements would not need to be performed until July 19, 2021, the compliance date of adopted energy conservation standards for dedicated-purpose pool pumps.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

<sup>63</sup> U.S. Department of Labor, Bureau of Labor Statistics. 2015. Employer Costs for Employee Compensation—Management, Professional, and Related Employees. Washington, DC. [www.bls.gov/news.release/pdf/eccec.pdf](http://www.bls.gov/news.release/pdf/eccec.pdf).

that collection of information displays a currently valid OMB Control Number.

#### *D. Review Under the National Environmental Policy Act of 1969*

In this final rule, DOE is adopting new definitions; a new test procedure; and new certification, enforcement, and labeling requirements for dedicated-purpose pool pumps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule considers a test procedure for dedicated-purpose pool pumps that is largely based upon industry test procedures and methodologies resulting from a negotiated rulemaking without affecting the amount, quality, or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### *E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to

energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national

economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

#### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is

consistent with applicable policies in those guidelines.

#### K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the NOPR must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for dedicated-purpose pool pumps adopted in this final rule incorporates testing methods contained

in certain sections of the following commercial standards:

(1) UL 1081, (“ANSI/UL 1081–2016”), “Standard for Swimming Pool Pumps, Filters, and Chlorinators,” 7th Edition, ANSI approved October 21, 2016.

(2) Canadian Standards Association (CSA) C747–2009 (Reaffirmed 2014), “Energy Efficiency Test Methods for Small Motors,” CSA reaffirmed 2014, section 1, “Scope”; section 3, “Definitions”; section 5, “General Test Requirements”; and section 6, “Test Method.”

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 114–2010, “Test Procedure for Single-Phase Induction Motors,” Approved September 30, 2010, section 3.2, “Tests with load”; section 4 “Testing facilities”; section 5.2 “Mechanical measurements”; section 5.3 “Temperature measurements”; and section 6 “Tests.”

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard 113–1985, “IEEE Guide: Test Procedures for Direct-Current Machines,” 1985, section 3.1, “Instrument Selection Factors”; section 3.4 “Power Measurement”; section 3.5 “Power Sources”; section 4.1.2 “Ambient Air”; section 4.1.4 “Direction of Rotation”; section 5.4.1 “Reference Conditions”; and section 5.4.3.2 “Dynamometer or Torquemeter Method.”

(5) NSF International Standard (NSF)/American National Standards Institute (ANSI) 50–2015, (“NSF/ANSI 50–2015”), “Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,” approved January 26, 2015, section C.3, “self-priming capability,” of Annex C, “Test methods for the evaluation of centrifugal pumps.”

In addition, the rule expands the incorporation by reference of Hydraulic Institute (HI) 40.6–2014, (“HI 40.6–2014”) “Methods for Rotodynamic Pump Efficiency Testing,” (except for section 40.6.4.1, “Vertically suspended pumps”; section 40.6.4.2, “Submersible pumps”; section 40.6.5.3, “Test report”; section 40.6.5.5, “Test conditions”; section 40.6.5.5.2, “Speed of rotation during testing”; section 40.6.6.1, “Translation of test results to rated speed of rotation”; Appendix A, section A.7, “Testing at temperatures exceeding 30 °C (86 °F)”; and Appendix B, “Reporting of test results (normative)”; copyright 2014. HI 40.6–2014 is already IBR approved for § 431.464, and appendix A to subpart Y of part 431. 10 CFR 431.463. As such, DOE is only modifying the existing incorporation by reference to extend the applicability of certain sections to the new appendices

B and C to subpart Y that will contain the DPPP test procedure.

Although the DPPP test procedure is not exclusively based on these industry testing standards, some components of the test procedure will adopt definitions, test parameters, measurement techniques, and additional calculations from them without amendment. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.*, whether it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

#### M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference six industry standards related to pump nomenclature, definitions, and test specifications, which DOE has referenced in its proposed definitions and test procedure.

Specifically, the definitions in this final rule, as well as relevant testing procedures to determine self-priming capability, incorporate by reference the following sections of the following standards:

(1) UL 1081, (“ANSI/UL 1081–2016”), “Standard for Swimming Pool Pumps, Filters, and Chlorinators,” 7th Edition, ANSI approved October 21, 2016.

(2) Canadian Standards Association (CSA) C747–2009 (Reaffirmed 2014), “Energy Efficiency Test Methods for Small Motors,” CSA reaffirmed 2014, section 1, “Scope”; section 3, “Definitions”; section 5, “General Test Requirements”; and section 6, “Test Method.”

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 114–2010, “Test Procedure for Single-Phase Induction Motors,” Approved September 30, 2010, section 3.2, “Tests with load”; section 4 “Testing facilities”; section 5.2 “Mechanical measurements”; section 5.3 “Temperature measurements”; and section 6 “Tests.”

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard 113–1985, “IEEE Guide: Test Procedures for Direct-Current Machines,” 1985, section 3.1, “Instrument Selection Factors”; section 3.4 “Power Measurement”; section 3.5 “Power Sources”; section 4.1.2 “Ambient Air”; section 4.1.4 “Direction of Rotation”; section 5.4.1 “Reference Conditions”; and section 5.4.3.2 “Dynamometer or Torquemeter Method.”

(5) NSF International Standard (NSF)/American National Standards Institute (ANSI) 50–2015, (“NSF/ANSI 50–2015”), “Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,” approved January 26, 2015, section C.3, “self-priming capability,” of Annex C, “Test methods for the evaluation of centrifugal pumps.”

(6) Hydraulic Institute (HI) 40.6–2014, (“HI 40.6–2014–B”) “Methods for Rotodynamic Pump Efficiency Testing,” (except for section 40.6.4.1, “Vertically suspended pumps”; section 40.6.4.2, “Submersible pumps”; section 40.6.5.3, “Test report”; section 40.6.5.5, “Test conditions”; section 40.6.5.5.2, “Speed of rotation during testing”; section 40.6.6.1, “Translation of test results to rated speed of rotation”; Appendix A, section A.7, “Testing at temperatures exceeding 30 °C (86 °F)”; and Appendix B, “Reporting of test results (normative)”; to establish procedures for measuring relevant pump performance parameters.

DOE incorporates by reference UL 1081–2016 into 10 CFR 431.462 and NSF/ANSI 50–2015 into 10 CFR 429.59, 10 CFR 429.134, 10 CFR 431.462, and appendices B and C of subpart Y. UL 1081–2016 describes, among other things, the safety-related performance and construction requirements for rating dedicated-purpose pool pumps under the UL 1081 standard. Section C.3 of annex C of the NSF/ANSI 50–2015 standard describes the test methods and criteria for establishing the self-priming capability of dedicated-purpose pool pumps.

DOE incorporates by reference CSA C747–2009 (RA 2014) into appendices B and C of part 431 to describe the standardized methods for determining certain DPPP motor horsepower characteristics. CSA C747–2009 (RA 2014) contains standardized methods for evaluating and categorizing AC and DC electric motors that are internationally recognized and are harmonized with IEEE 114–2010 and IEEE 113–1985.

DOE also incorporates by reference IEEE 114–2010 into appendices B and C of part 431 to describe the standardized

methods for determining certain DPPP motor horsepower characteristics for dedicated-purpose pool pumps with single-phase AC motors. IEEE 114–2010 contains standardized methods for evaluating and categorizing single-phase induction motors. These methods are consistent with those in CSA C742–2009 (RA 2014).

DOE also incorporates by reference IEEE 113–1985 into appendices B and C of part 431 to describe the standardized methods for determining certain DPPP motor horsepower characteristics for dedicated-purpose pool pumps with DC motors. IEEE 113–1985 contains standardized methods for evaluating and categorizing DC motors. These methods are consistent with those in CSA C742–2009 (RA 2014).

In addition, the test procedure adopted in this final rule incorporates by reference the Hydraulic Institute (HI) 40.6–2014, (“HI 40.6–2014–B”) “Methods for Rotodynamic Pump Efficiency Testing,” (except for section 40.6.4.1, “Vertically suspended pumps”; section 40.6.4.2, “Submersible pumps”; section 40.6.5.3, “Test report”; section 40.6.5.5, “Test conditions”; section 40.6.5.5.2, “Speed of rotation during testing”; section 40.6.6.1, “Translation of test results to rated speed of rotation”; Appendix A, section A.7, “Testing at temperatures exceeding 30 °C (86 °F)”; and Appendix B, “Reporting of test results (normative)”; to establish procedures for measuring relevant pump performance parameters. HI 40.6–2014–B, with certain exceptions, is already IBR approved for appendix A to subpart Y of part 431. 10 CFR 431.463. DOE proposes to incorporate by reference HI 40.6–2014–B, with certain additional exceptions, into the new appendices B and C to subpart Y that would contain the DPPP test procedure, as well as 10 CFR 429.134 to support DOE’s enforcement testing. HI 40.6–2014–B is an industry-accepted standard used to specify methods of testing for determining the head, flow rate, pump power input, driver power input, pump power output, and other relevant parameters necessary to determine the WEF of applicable pumps, as well as other voluntary metrics, adopted in this final rule (see sections III.C and III.H).

Additionally, these standards can be obtained from the organizations directly at the following addresses:

(1) UL, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or by visiting <http://ul.com>.

(2) CSA, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, (800) 463–6727, or by visiting [www.csagroup.org](http://www.csagroup.org).

(3) IEEE, 45 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060, or by visiting <http://www.ieee.org>.

(4) NSF International, 789 N. Dixboro Road, Ann Arbor, MI 48105, (734) 769–8010, or by visiting [www.nsf.org](http://www.nsf.org).

(5) Hydraulic Institute, located at 6 Campus Drive, First Floor North, Parsippany, NJ, 07054, (973) 267–9700, or by visiting [www.pumps.org](http://www.pumps.org).

## V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

## List of Subjects

### 10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

### 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 22, 2016.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE amends parts 429 and 431 of chapter II, subchapter D of title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.4 is amended by:

■ a. Redesignating paragraph (d) as (e); and

■ b. Adding new paragraphs (d) and (f).

The additions read as follows:

### § 429.4 Materials incorporated by reference.

\* \* \* \* \*

(d) *HI*. Hydraulic Institute, 6 Campus Drive, First Floor North, Parsippany, NJ 07054–4406, 973–267–9700. [www.Pumps.org](http://www.Pumps.org).

(1) HI 40.6–2014, (“HI 40.6–2014–B”), “Methods for Rotodynamic Pump Efficiency Testing,” (except for sections 40.6.4.1 “Vertically suspended pumps”, 40.6.4.2 “Submersible pumps”, 40.6.5.3 “Test report”, 40.6.5.5 “Test conditions”, 40.6.5.5.2 “Speed of rotation during testing”, and 40.6.6.1 “Translation of test results to rated speed of rotation”, and Appendix A “Testing arrangements (normative)”: A.7 “Testing at temperatures exceeding 30 °C (86 °F)”, and Appendix B “Reporting of test results (normative)”), copyright 2014, IBR approved for § 429.134.

(2) [Reserved]  
\* \* \* \* \*

(f) NSF. NSF International. 789 N. Dixboro Road, Ann Arbor, MI 48105, (743) 769–8010. *www.nsf.org*.  
(1) NSF/ANSI 50–2015, “Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,” Annex C—“Test methods for the evaluation of centrifugal pumps,” Section C.3, “self-priming capability,” ANSI approved January 26, 2015, IBR approved for §§ 429.59 and 429.134.  
(2) [Reserved]

- 3. Section 429.59 is amended by:
- a. Revising paragraph (a)(1)(ii);
- b. Adding paragraphs (a)(2), (b)(2)(iv) and (v), and (b)(3)(iv); and
- c. Revising paragraph (c).

The revisions and additions read as follows:

**§ 429.59 Pumps.**

- (a) \* \* \*
- (1) \* \* \*
- (ii) Any representation of weighted energy factor of a basic model must be less than or equal to the lower of:
- (A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

And  $\bar{x}$  is the sample mean;  $n$  is the number of samples; and  $x_i$  is the maximum of the  $i$ th sample; or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95} \left( \frac{s}{\sqrt{n}} \right)$$

And  $\bar{x}$  is the sample mean;  $s$  is the sample standard deviation;  $n$  is the number of samples; and  $t_{0.95}$  is the  $t$  statistic for a 95 percent one-tailed confidence interval with  $n-1$  degrees of freedom (from appendix A of this subpart).

(2) *Other representations*—(i) *Rated hydraulic horsepower*. The representative value of rated hydraulic horsepower of a basic model of dedicated-purpose pool pump must be the mean of the rated hydraulic horsepower for each tested unit.

(ii) *Dedicated-purpose pool pump motor total horsepower*. The representative value of dedicated-purpose pool pump motor total horsepower of a basic model of dedicated-purpose pool pump must be the mean of the dedicated-purpose pool pump motor total horsepower for each tested unit.

(iii) *True power factor (PF<sub>i</sub>)*. The representative value of true power factor at each load point  $i$  of a basic model of dedicated-purpose pool pump must be the mean of the true power factors at that load point for each tested unit of dedicated-purpose pool pump.

(b) \* \* \*  
(2) \* \* \*

(iv) For a dedicated-purpose pool pump subject to the test methods prescribed in § 431.464(b) of this chapter: weighted energy factor (WEF) in kilogallons per kilowatt-hour (kgal/kWh); rated hydraulic horsepower in horsepower (hp); the speed configuration for which the pump is being rated (*i.e.*, single-speed, two-speed, multi-speed, or variable-speed); true power factor at all applicable test procedure load points  $i$  (dimensionless), as specified in Table 1 of appendix B or

C to subpart Y of part 431 of this chapter, as applicable; dedicated-purpose pool pump nominal motor horsepower in horsepower (hp); dedicated-purpose pool pump motor total horsepower in horsepower (hp); dedicated-purpose pool pump service factor (dimensionless); for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps: The maximum head (in feet) which is based on the mean of the units in the tested sample; a statement regarding whether freeze protection is shipped enabled or disabled; for dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled: The default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm); for self-priming pool filter pumps a statement regarding whether the pump is certified with NSF/ANSI 50–2015 (incorporated by reference, see § 429.4) as self-priming; and, for self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015 as self-priming: The vertical lift (in feet) and true priming time (in minutes) for the DPPP model.

(v) For integral cartridge-filter and sand-filter pool pumps, the maximum run-time (in hours) of the pool pump control with which the integral cartridge-filter or sand-filter pump is distributed in commerce.

(3) \* \* \*  
(iv) For a dedicated-purpose pool pump subject to the test methods prescribed in § 431.464(b) of this chapter: Calculated driver power input and flow rate at each load point  $i$  ( $P_i$  and  $Q_i$ ), in horsepower (hp) and gallons per minute (gpm), respectively.

\* \* \* \* \*  
(c) *Individual model numbers*. (1) For a pump subject to the test methods prescribed in appendix A to subpart Y of part 431 of this chapter, each individual model number required to be reported pursuant to § 429.12(b)(6) must consist of the following:

Equipment configuration (as distributed in commerce)	Basic model number	Individual model number(s)		
		1	2	3
Bare pump .....	Number unique to the basic model .....	Bare pump .....	N/A .....	N/A.
Bare pump with driver .....	Number unique to the basic model .....	Bare pump .....	Driver .....	N/A.
Bare pump with driver and controls .....	Number unique to the basic model .....	Bare pump .....	Driver .....	Controls.

(2) Or must otherwise provide sufficient information to identify the specific driver model and/or controls

model(s) with which a bare pump is distributed.

■ 4. Section 429.110 is amended by revising paragraphs (e)(1) and (5) to read as follows:



**§ 429.110 Enforcement testing.**

\* \* \* \*

(e) \* \* \*

(1) For products with applicable energy conservation standard(s) in § 430.32 of this chapter, and commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, commercial clothes washers, dedicated-purpose pool pumps, and metal halide lamp ballasts, DOE will use a sample size of not more than 21 units and follow the sampling plans in appendix A of this subpart (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment).

\* \* \* \*

(5) For pumps subject to the standards specified in § 431.465(a) of this chapter, DOE will use an initial sample size of not more than four units and will determine compliance based on the arithmetic mean of the sample.

\* \* \* \*

■ 5. Section 429.134 is amended by revising paragraph (i) to read as follows:

**§ 429.134 Product-specific enforcement provisions.**

\* \* \* \*

(i) *Pumps*—(1) *General purpose pumps.* (i) The volume rate of flow (flow rate) at BEP and nominal speed of rotation of each tested unit of the basic model will be measured pursuant to the test requirements of § 431.464 of this chapter, where the value of volume rate of flow (flow rate) at BEP and nominal speed of rotation certified by the manufacturer will be treated as the expected BEP flow rate. The results of the measurement(s) will be compared to the value of volume rate of flow (flow rate) at BEP and nominal speed of rotation certified by the manufacturer. The certified volume rate of flow (flow rate) at BEP and nominal speed of rotation will be considered valid only if the measurement(s) (either the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation for a single unit sample or the average of the measured flow rates for a multiple unit sample) is within five percent of the certified volume rate of flow (flow rate) at BEP and nominal speed of rotation.

(A) If the representative value of volume rate of flow (flow rate) at BEP and nominal speed of rotation is found to be valid, the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation will be used in subsequent calculations of constant load pump energy rating (PER<sub>CL</sub>) and constant load pump energy index (PEI<sub>CL</sub>) or variable load pump energy

rating (PER<sub>VL</sub>) and variable load pump energy index (PEI<sub>VL</sub>) for that basic model.

(B) If the representative value of volume rate of flow (flow rate) at BEP and nominal speed of rotation is found to be invalid, the mean of all the measured volume rate of flow (flow rate) at BEP and nominal speed of rotation values determined from the tested unit(s) will serve as the new expected BEP flow rate and the unit(s) will be retested until such time as the measured rate of flow (flow rate) at BEP and nominal speed of rotation is within 5 percent of the expected BEP flow rate.

(ii) DOE will test each pump unit according to the test method specified by the manufacturer in the certification report submitted pursuant to § 429.59(b).

(2) *Dedicated-purpose pool pumps.* (i) The rated hydraulic horsepower of each tested unit of the basic model of dedicated-purpose pool pump will be measured pursuant to the test requirements of § 431.464(b) of this chapter and the result of the measurement(s) will be compared to the value of rated hydraulic horsepower certified by the manufacturer. The certified rated hydraulic horsepower will be considered valid only if the measurement(s) (either the measured rated hydraulic horsepower for a single unit sample or the average of the measured rated hydraulic horsepower values for a multiple unit sample) is within 5 percent of the certified rated hydraulic horsepower.

(A) If the representative value of rated hydraulic horsepower is found to be valid, the value of rated hydraulic horsepower certified by the manufacturer will be used to determine the standard level for that basic model.

(B) If the representative value of rated hydraulic horsepower is found to be invalid, the mean of all the measured rated hydraulic horsepower values determined from the tested unit(s) will be used to determine the standard level for that basic model.

(ii) To verify the self-priming capability of non-self-priming pool filter pumps and of self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015 (incorporated by reference, see § 429.4) as self-priming, the vertical lift and true priming time of each tested unit of the basic model of self-priming or non-self-priming pool filter pump will be measured pursuant to the test requirements of § 431.464(b) of this chapter.

(A) For self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015 as self-priming, at a vertical lift of 5.0 feet, the result of the true priming

time measurement(s) will be compared to the value of true priming time certified by the manufacturer. The certified value of true priming time will be considered valid only if the measurement(s) (either the measured true priming time for a single unit sample or the average of true priming time values for a multiple unit sample) is within 5 percent of the certified value of true priming time.

(1) If the representative value of true priming time is found to be valid, the value of true priming time certified by the manufacturer will be used to determine the appropriate equipment class and standard level for that basic model.

(2) If the representative value of true priming time is found to be invalid, the mean of the values of true priming time determined from the tested unit(s) will be used to determine the appropriate equipment class and standard level for that basic model.

(B) For non-self-priming pool filter pumps, at a vertical lift of 5.0 feet, the result of the true priming time measurement(s) (either the measured true priming time for a single unit sample or the average of true priming time values, for a multiple unit sample) will be compared to the value of true priming time referenced in the definition of non-self-priming pool filter pump at § 431.462 (10.0 minutes).

(1) If the measurement(s) of true priming time are greater than 95 percent of the value of true priming time referenced in the definition of non-self-priming pool filter pump at § 431.462 with a vertical lift of 5.0 feet, the DPPP model will be considered a non-self-priming pool filter pump for the purposes of determining the appropriate equipment class and standard level for that basic model.

(2) If the conditions specified in paragraph (i)(2)(ii)(B)(1) of this section are not satisfied, then the DPPP model will be considered a self-priming pool filter pump for the purposes of determining the appropriate equipment class and standard level for that basic model.

(iii) To verify the maximum head of self-priming pool filter pump, non-self-priming pool filter pumps, and waterfall pumps, the maximum head of each tested unit of the basic model of self-priming pool filter pump, non-self-priming pool filter pump, or waterfall pump will be measured pursuant to the test requirements of § 431.464(b) of this chapter and the result of the measurement(s) will be compared to the value of maximum head certified by the manufacturer. The certified value of maximum head will be considered valid

only if the measurement(s) (either the measured maximum head for a single unit sample or the average of the maximum head values for a multiple unit sample) is within 5 percent of the certified values of maximum head.

(A) If the representative value of maximum head is found to be valid, the value of maximum head certified by the manufacturer will be used to determine the appropriate equipment class and standard level for that basic model.

(B) If the representative value of maximum head is found to be invalid, the measured value(s) of maximum head determined from the tested unit(s) will be used to determine the appropriate equipment class and standard level for that basic model.

(iv) To verify that a DPPP model complies with the applicable freeze protection control design requirements, the initiation temperature, run-time, and speed of rotation of the default control configuration of each tested unit of the basic model of dedicated-purpose pool pump will be evaluated according to the procedure specified in paragraph (i)(2)(iv)(A) of this section:

(A)(1) Set up and configure the dedicated-purpose pool pump under test according to the manufacturer instructions, including any necessary initial priming, in a test apparatus as described in appendix A of HI 40.6–2014–B (incorporated by reference, see § 429.4), except that the ambient temperature registered by the freeze protection ambient temperature sensor will be able to be measured and controlled by, for example, exposing the freeze protection temperature sensor to a specific temperature by submerging the sensor in a water bath of known temperature, by adjusting the actual ambient air temperature of the test chamber and measuring the temperature at the freeze protection ambient temperature sensor location, or by other means that allows the ambient temperature registered by the freeze protection temperature sensor to be reliably simulated, varied, and measured. Do not adjust the default freeze protection control settings or enable the freeze protection control if it is shipped disabled.

(2) Activate power to the pump with the flow rate set to zero (*i.e.*, the pump is energized but not circulating water). Set the ambient temperature to  $42.0 \pm 0.5$  °F and allow the temperature to stabilize, where stability is determined in accordance with section 40.6.3.2.2 of HI 40.6–2014–B. After 5 minutes, decrease the temperature measured by the freeze protection temperature sensor by  $1.0 \pm 0.5$  °F and allow the temperature to stabilize. After each

reduction in ambient temperature and subsequent stabilization, record the DPPP rotating speed, if any, and freeze protection ambient temperature reading, where the “freeze protection ambient temperature reading” is representative of the temperature measured by the freeze protection ambient temperature sensor, which may be recorded by a variety of means depending on how the temperature is being simulated and controlled. If no flow is initiated, record zero rpm or no flow. Continue decreasing the temperature measured by the freeze protection temperature sensor by  $1.0 \pm 0.5$  °F after 5.0 minutes of stable operation at the previous temperature reading until the pump freeze protection initiates water circulation or until the ambient temperature of  $38.0 \pm 0.5$  °F has been evaluated (*i.e.*, the end of the 5.0 minute interval of  $38.0$  °F), whichever occurs first.

(3) If and when the DPPP freeze protection controls initiate water circulation, increase the ambient temperature reading registered by the freeze protection temperature sensor to a temperature of  $42.0 \pm 0.5$  °F and maintain that temperature for 60.0 minutes. Do not modify or interfere with the operation of the DPPP freeze protection operating cycle. After 60.0 minutes, record the freeze protection ambient temperature and rotating speed, if any, of the dedicated-purpose pool pump under test.

(B) If the dedicated-purpose pool pump initiates water circulation at a temperature greater than  $40.0$  °F; if the dedicated-purpose pool pump was still circulating water after 60.0 minutes of operation at  $42.0 \pm 0.5$  °F; or if rotating speed measured at any point during the DPPP freeze protection control test in paragraph (i)(2)(iii)(A) of this section was greater than one-half of the maximum rotating speed of the DPPP model certified by the manufacturer, that DPPP model is deemed to not comply with the design requirement for freeze protection controls.

(C) If none of the conditions specified in paragraph (i)(2)(iv)(B) of this section are met, including if the DPPP freeze protection control does not initiate water circulation at all during the test, the dedicated-purpose pool pump under test is deemed compliant with the design requirement for freeze protection controls.

\* \* \* \* \*

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 6. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 7. Section 431.462 is amended by:

■ a. Revising the introductory text; and

■ b. Revising the definition of “Basic model;”

■ c. Adding, in alphabetical order, definitions for “Basket strainer,” “Dedicated-purpose pool pump,” “Dedicated-purpose pool pump motor total horsepower,” “Dedicated-purpose pool pump service factor,” “Designed and marketed,” “Freeze protection control,” “Integral,” “Integral cartridge-filter pool pump,” “Integral sand-filter pool pump,” “Multi-speed dedicated-purpose pool pump,” “Non-self-priming pool filter pump,” “Pool filter pump,” “Pressure cleaner booster pump,” “Removable cartridge filter,” “Rigid electric spa pump,” “Sand filter,” and “Self-priming pool filter pump;”

■ d. Revising the definition of “Self-priming pump;” and

■ e. Adding, in alphabetical order, definitions for “Single-speed dedicated-purpose pool pump,” “Storable electric spa pump,” “Submersible pump,” “Two-speed dedicated-purpose pool pump,” “Variable-speed dedicated-purpose pool pump,” “Variable speed drive,” and “Waterfall pump.”

The additions and revisions read as follows:

### § 431.462 Definitions.

The following definitions are applicable to this subpart, including appendices A and B. In cases where there is a conflict, the language of the definitions adopted in this section takes precedence over any descriptions or definitions found in the 2014 version of ANSI/HI Standard 1.1–1.2, “Rotodynamic (Centrifugal) Pumps For Nomenclature And Definitions” (ANSI/HI 1.1–1.2–2014; incorporated by reference, see § 431.463), or the 2014 version of ANSI/HI Standard 2.1–2.2, “Rotodynamic (Vertical) Pumps For Nomenclature And Definitions” (ANSI/HI 2.1–2.2–2014; incorporated by reference, see § 431.463). In cases where definitions reference design intent, DOE will consider marketing materials, labels and certifications, and equipment design to determine design intent.

\* \* \* \* \*

*Basic model* means all units of a given class of pump manufactured by one manufacturer, having the same primary

energy source, and having essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; and, in addition, for pumps that are subject to the standards specified in § 431.465(b), the following provisions also apply:

(1) All variations in numbers of stages of bare RSV and ST pumps must be considered a single basic model;

(2) Pump models for which the bare pump differs in impeller diameter, or impeller trim, may be considered a single basic model; and

(3) Pump models for which the bare pump differs in number of stages or impeller diameter and which are sold with motors (or motors and controls) of varying horsepower may only be considered a single basic model if:

(i) For ESCC, ESFM, IL, and RSV pumps, each motor offered in the basic model has a nominal full load motor efficiency rated at the Federal minimum (see the current table for NEMA Design B motors at § 431.25) or the same number of bands above the Federal minimum for each respective motor horsepower (see Table 3 of appendix A to subpart Y of this part); or

(ii) For ST pumps, each motor offered in the basic model has a full load motor efficiency at the default nominal full load submersible motor efficiency shown in Table 2 of appendix A to subpart Y of this part or the same number of bands above the default nominal full load submersible motor efficiency for each respective motor horsepower (see Table 3 of appendix A to subpart Y of this part).

**Basket strainer** means a perforated or otherwise porous receptacle, mounted within a housing on the suction side of a pump, that prevents solid debris from entering a pump. The basket strainer receptacle is capable of passing spherical solids of 1 mm in diameter, and can be removed by hand or using only simple tools (e.g., screwdriver, pliers, open-ended wrench).

\* \* \* \* \*

**Dedicated-purpose pool pump** comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps, integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps.

**Dedicated-purpose pool pump motor total horsepower** means the product of the dedicated-purpose pool pump nominal motor horsepower and the dedicated-purpose pool pump service factor of a motor used on a dedicated-

purpose pool pump based on the maximum continuous duty motor power output rating allowable for the motor's nameplate ambient rating and insulation class. (Dedicated-purpose pool pump motor total horsepower is also referred to in the industry as service factor horsepower or motor capacity.)

**Dedicated-purpose pool pump service factor** means a multiplier applied to the rated horsepower of a pump motor to indicate the percent above nameplate horsepower at which the motor can operate continuously without exceeding its allowable insulation class temperature limit.

**Designed and marketed** means that the equipment is designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed for that application, with the designation on the packaging and any publicly available documents (e.g., product literature, catalogs, and packaging labels).

\* \* \* \* \*

**Freeze protection control** means a pool pump control that, at a certain ambient temperature, turns on the dedicated-purpose pool pump to circulate water for a period of time to prevent the pool and water in plumbing from freezing.

\* \* \* \* \*

**Integral** means a part of the device that cannot be removed without compromising the device's function or destroying the physical integrity of the unit.

**Integral cartridge-filter pool pump** means a pump that requires a removable cartridge filter, installed on the suction side of the pump, for operation; and the cartridge filter cannot be bypassed.

**Integral sand-filter pool pump** means a pump distributed in commerce with a sand filter that cannot be bypassed.

\* \* \* \* \*

**Multi-speed dedicated-purpose pool pump** means a dedicated-purpose pool pump that is capable of operating at more than two discrete, pre-determined operating speeds separated by speed increments greater than 100 rpm, where the lowest speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce with an on-board pool pump control (i.e., variable speed drive and user interface or programmable switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times.

\* \* \* \* \*

**Non-self-priming pool filter pump** means a pool filter pump that is not

certified under NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) to be self-priming and is not capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time less than or equal to 10.0 minutes, when tested in accordance with section F of appendix B or C of this subpart, and is not a waterfall pump.

**Pool filter pump** means an end suction pump that:

(1) Either:

(i) Includes an integrated basket strainer; or

(ii) Does not include an integrated basket strainer, but requires a basket strainer for operation, as stated in manufacturer literature provided with the pump; and

(2) May be distributed in commerce connected to, or packaged with, a sand filter, removable cartridge filter, or other filtration accessory, so long as the filtration accessory are connected with consumer-removable connections that allow the filtration accessory to be bypassed.

\* \* \* \* \*

**Pressure cleaner booster pump** means an end suction, dry rotor pump designed and marketed for pressure-side pool cleaner applications, and which may be UL listed under ANSI/UL 1081–2016 (incorporated by reference, see § 431.463).

\* \* \* \* \*

**Removable cartridge filter** means a filter component with fixed dimensions that captures and removes suspended particles from water flowing through the unit. The removable cartridge filter is not capable of passing spherical solids of 1 mm in diameter or greater, and can be removed from the filter housing by hand or using only simple tools (e.g., screwdrivers, pliers, open-ended wrench).

**Rigid electric spa pump** means an end suction pump that does not contain an integrated basket strainer or require a basket strainer for operation as stated in manufacturer literature provided with the pump and that meets the following three criteria:

(1) Is assembled with four through bolts that hold the motor rear endplate, rear bearing, rotor, front bearing, front endplate, and the bare pump together as an integral unit;

(2) Is constructed with buttress threads at the inlet and discharge of the bare pump; and

(3) Uses a casing or volute and connections constructed of a non-metallic material.

\* \* \* \* \*

**Sand filter** means a device designed to filter water through sand or an alternate sand-type media.

*Self-priming pool filter pump* means a pool filter pump that is certified under NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) to be self-priming or is capable of re-priming to a vertical lift of at least 5.0 feet with a true priming time less than or equal to 10.0 minutes, when tested in accordance with section F of appendix B or C of this subpart, and is not a waterfall pump.

*Self-priming pump* means a pump that either is a self-priming pool filter pump or a pump that:

- (1) Is designed to lift liquid that originates below the centerline of the pump inlet;
- (2) Contains at least one internal recirculation passage; and
- (3) Requires a manual filling of the pump casing prior to initial start-up, but is able to re-prime after the initial start-up without the use of external vacuum sources, manual filling, or a foot valve.

\* \* \* \* \*

*Single-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at only one speed.

*Storable electric spa pump* means a pump that is distributed in commerce with one or more of the following:

- (1) An integral heater; and
- (2) An integral air pump.

*Submersible pump* means a pump that is designed to be operated with the motor and bare pump fully submerged in the pumped liquid.

\* \* \* \* \*

*Two-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at only two different pre-determined operating speeds, where the low operating speed is less than or equal to half of the maximum operating speed and greater than zero, and must be distributed in commerce either:

- (1) With a pool pump control (e.g., variable speed drive and user interface or switch) that is capable of changing the speed in response to user preferences; or
- (2) Without a pool pump control that has the capability to change speed in response to user preferences, but is unable to operate without the presence of such a pool pump control.

*Variable-speed dedicated-purpose pool pump* means a dedicated-purpose pool pump that is capable of operating at a variety of user-determined speeds, where all the speeds are separated by at most 100 rpm increments over the operating range and the lowest operating speed is less than or equal to one-third of the maximum operating speed and greater than zero. Such a pump must include a variable speed

drive and be distributed in commerce either:

- (1) With a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times; or
- (2) Without a user interface that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times, but is unable to operate without the presence of a user interface.

*Variable speed drive* means equipment capable of varying the speed of the motor.

*Waterfall pump* means a pool filter pump with a certified maximum head less than or equal to 30.0 feet, and a maximum speed less than or equal to 1,800 rpm.

- 8. Section 431.463 is amended by:
- a. Revising paragraph (a);
- b. Redesignating paragraphs (b) through (d) and (e) as paragraphs (c) through (f) and (h), respectively;
- c. Adding new paragraph (b);
- d. In newly redesignated paragraph (d), adding paragraph (d)(4);
- e. Adding new paragraphs (e) and (g); and
- f. In newly redesignated paragraph (h), adding paragraph (h)(2).

The revisions and additions read as follows:

**§ 431.463 Materials incorporated by reference.**

(a) *General.* DOE incorporates by reference the following standards into subpart Y of this part. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval, and notification of any change in the material will be published in the **Federal Register**. All approved material can be obtained from the sources listed in this section and is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: [http://www1.eere.energy.gov/buildings/appliance\\_standards](http://www1.eere.energy.gov/buildings/appliance_standards). It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

call 202–741–6030, or go to:

[www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) *CSA.* Canadian Standards Association, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, (800) 463–6727.

[www.csagroup.org](http://www.csagroup.org).

(1) CSA C747–2009 (Reaffirmed 2014), (“CSA C747–2009 (RA 2014)”), “Energy efficiency test methods for small motors,” CSA reaffirmed 2014, IBR approved for appendices B and C to this subpart, as follows:

- (i) Section 1, “Scope”;
- (ii) Section 3, “Definitions”;
- (iii) Section 5, “General Test Requirements”; and
- (iv) Section 6, “Test Method.”

(2) [Reserved]

\* \* \* \* \*

(d) \* \* \*

(4) HI 40.6–2014, (“HI 40.6–2014–B”), “Methods for Rotodynamic Pump Efficiency Testing” (except sections 40.6.4.1 “Vertically suspended pumps”, 40.6.4.2 “Submersible pumps”, 40.6.5.3 “Test report”, 40.6.5.5 “Test conditions”, 40.6.5.5.2 “Speed of rotation during test”, and 40.6.6.1 “Translation of test results to rated speed of rotation”, Appendix A “Test arrangements (normative)”: A.7 “Testing at temperatures exceeding 30 °C (86 °F)”, and Appendix B, “Reporting of test results (normative)”), copyright 2014, IBR approved for appendices B and C to this subpart.

(e) *IEEE.* Institute of Electrical and Electronics Engineers, Inc., 45 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060. <http://www.ieee.org>.

(1) IEEE Std 113–1985, (“IEEE 113–1985”), “IEEE Guide: Test Procedures for Direct-Current Machines,” copyright 1985, IBR approved for appendices B and C to this subpart, as follows:

(i) Section 3, Electrical Measurements and Power Sources for all Test Procedures:

(A) Section 3.1, “Instrument Selection Factors”;

(B) Section 3.4 “Power Measurement”; and

(C) Section 3.5 “Power Sources”;

(ii) Section 4, Preliminary Tests:

(A) Section 4.1, Reference Conditions, Section 4.1.2, “Ambient Air”; and

(B) Section 4.1, Reference Conditions, Section 4.1.4 “Direction of Rotation”; and

(iii) Section 5, Performance Determination:

(A) Section 5.4, Efficiency, Section 5.4.1, “Reference Conditions”; and

(B) Section 5.4.3, Direct Measurements of Input and Output,

Section 5.4.3.2 “Dynamometer or Torquemeter Method.”

(2) IEEE Std 114–2010, (“IEEE 114–2010”), “IEEE Standard Test Procedure for Single-Phase Induction Motors,” approved September 30, 2010, IBR approved for appendices B and C to this subpart, as follows:

- (i) Section 3, “General tests”, Section 3.2, “Tests with load”; and
  - (ii) Section 4 “Testing facilities”; and
  - (iii) Section 5, “Measurements”:
- (A) Section 5.2 “Mechanical measurements”;
  - (B) Section 5.3 “Temperature measurements”; and
  - (iv) Section 6 “Tests.”

\* \* \* \* \*

(g) NSF. NSF International. 789 N. Dixboro Road, Ann Arbor, MI 48105, (734) 769–8010. [www.nsf.org](http://www.nsf.org).

(1) NSF/ANSI 50–2015, “Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,” Annex C, “(normative Test methods for the evaluation of centrifugal pumps,” Section C.3, “Self-priming capability,” ANSI approved January 26, 2015, IBR approved for § 431.462 and appendices B and C to this subpart.

(2) [Reserved]

(h) \* \* \*

(2) UL 1081, (“ANSI/UL 1081–2016”), “Standard for Swimming Pool Pumps, Filters, and Chlorinators,” 7th Edition, ANSI approved October 21, 2016, IBR approved for § 431.462.

■ 9. Section 431.464 is revised to read as follows:

**§ 431.464 Test procedure for the measurement of energy efficiency, energy consumption, and other performance factors of pumps.**

(a) *General pumps*—(1) *Scope*. This paragraph (a) provides the test procedures for determining the constant and variable load pump energy index for:

(i) The following categories of clean water pumps:

- (A) End suction close-coupled (ESCC);
- (B) End suction frame mounted/own bearings (ESFM);
- (C) In-line (IL);
- (D) Radially split, multi-stage, vertical, in-line casing diffuser (RSV); and
- (E) Submersible turbine (ST) pumps.

(ii) With the following characteristics:

- (A) Flow rate of 25 gpm or greater at BEP and full impeller diameter;
- (B) Maximum head of 459 feet at BEP and full impeller diameter and the number of stages required for testing (see section 1.2.2 of appendix A of this subpart);
- (C) Design temperature range from 14 to 248 °F;

(D) Designed to operate with either:

- (1) A 2- or 4-pole induction motor; or
- (2) A non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute (rpm) and/or 1,440 and 2,160 rpm, and in either case, the driver and impeller must rotate at the same speed;

(E) For ST pumps, a 6-inch or smaller bowl diameter; and

(F) For ESCC and ESFM pumps, a specific speed less than or equal to 5,000 when calculated using U.S.

customary units.

(iii) Except for the following pumps:

- (A) Fire pumps;
- (B) Self-priming pumps;
- (C) Prime-assist pumps;
- (D) Magnet driven pumps;
- (E) Pumps designed to be used in a nuclear facility subject to 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities”; and
- (F) Pumps meeting the design and construction requirements set forth in Military Specifications: MIL–P–17639F, “Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use” (as amended); MIL–P–17881D, “Pumps, Centrifugal, Boiler Feed, (Multi-Stage)” (as amended); MIL–P–17840C, “Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship Application)” (as amended); MIL–P–18682D, “Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard” (as amended); and MIL–P–18472G, “Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant” (as amended). Military specifications and standards are available for review at <http://everyspec.com/MIL-SPECS>.

(2) *Testing and calculations*. Determine the applicable constant load pump energy index (PEI<sub>CL</sub>) or variable load pump energy index (PEI<sub>VL</sub>) using the test procedure set forth in appendix A of this subpart.

(b) *Dedicated-purpose pool pumps*—(1) *Scope*. This paragraph (b) provides the test procedures for determining the weighted energy factor (WEF), rated hydraulic horsepower, dedicated-purpose pool pump nominal motor horsepower, dedicated-purpose pool pump motor total horsepower, dedicated-purpose pool pump service factor, and other pump performance parameters for:

(i) The following varieties of dedicated-purpose pool pumps:

- (A) Self-priming pool filter pumps;
- (B) Non-self-priming pool filter pumps;
- (C) Waterfall pumps; and
- (D) Pressure cleaner booster pumps;

(ii) Served by single-phase or polyphase input power;

(iii) Except for:

- (A) Submersible pumps; and
- (B) Self-priming and non-self-priming pool filter pumps with hydraulic output power greater than or equal to 2.5 horsepower.

(2) *Testing and calculations*.

Determine the weighted energy factor (WEF) using the test procedure set forth in appendix B or appendix C of this subpart, as applicable.

■ 10. Section 431.466 is revised to read as follows:

**§ 431.466 Pumps labeling requirements.**

(a) *General pumps*. For the pumps described in § 431.464(a), the following requirements apply to units manufactured on the same date that compliance is required with any applicable standards prescribed in § 431.465.

(1) *Pump nameplate*—(i) *Required information*. The permanent nameplate must be marked clearly with the following information:

(A) For bare pumps and pumps sold with electric motors but not continuous or non-continuous controls, the rated pump energy index—constant load (PEI<sub>CL</sub>), and for pumps sold with motors and continuous or non-continuous controls, the rated pump energy index—variable load (PEI<sub>VL</sub>);

(B) The bare pump model number; and

(C) If transferred directly to an end-user, the unit’s impeller diameter, as distributed in commerce. Otherwise, a space must be provided for the impeller diameter to be filled in.

(ii) *Display of required information*. All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump’s permanent nameplate. The PEI<sub>CL</sub> or PEI<sub>VL</sub>, as appropriate to a given pump model, must be identified in the form “PEI<sub>CL</sub> \_\_\_\_” or “PEI<sub>VL</sub> \_\_\_\_.” The model number must be in one of the following forms: “Model \_\_\_\_” or “Model number \_\_\_\_” or “Model No. \_\_\_\_.” The unit’s impeller diameter must be in the form “Imp. Dia. \_\_\_\_ (in.).”

(2) *Disclosure of efficiency information in marketing materials*. (i) The same information that must appear on a pump’s permanent nameplate pursuant to paragraph (a)(1)(i) of this section, must also be prominently displayed:

(A) On each page of a catalog that lists the pump; and

(B) In other materials used to market the pump.

(ii) [Reserved]

(b) *Dedicated-purpose pool pumps.* For the pumps described in § 431.464(b), the following requirements apply on the same date that compliance is required with any applicable standards prescribed in § 431.465.

(1) *Pump nameplate*—(i) *Required information.* The permanent nameplate must be marked clearly with the following information:

(A) The weighted energy factor (WEF); and

(B) The dedicated-purpose pool pump motor total horsepower.

(ii) *Display of required information.* All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump's permanent nameplate.

(A) The WEF must be identified in the form “WEF \_\_\_\_.”

(B) The dedicated-purpose pool pump motor total horsepower must be identified in one of the following forms: “Dedicated-purpose pool pump motor total horsepower \_\_\_\_,” “DPPP motor total horsepower \_\_\_\_,” “motor total horsepower \_\_\_\_,” “motor THP \_\_\_\_,” or “THP \_\_\_\_.”

(2) [Reserved]

#### **Appendix A to Subpart Y of Part 431 [Amended]**

■ 11. In the introductory note to appendix A of subpart Y of part 431, remove the reference “10 CFR 431.464” and add in its place “10 CFR 431.464(a)”.

■ 12. Add appendices B and C to subpart Y of part 431 to read as follows:

#### **Appendix B to Subpart Y of Part 431—Uniform Test Method for the Measurement of Energy Efficiency of Dedicated-Purpose Pool Pumps**

**Note:** On February 5, 2018 but before July 19, 2021, any representations made with respect to the energy use or efficiency of dedicated-purpose pool pumps subject to testing pursuant to 10 CFR 431.464(b) must be made in accordance with the results of testing pursuant to this appendix. Any optional representations of energy factor (EF) must be accompanied by a representation of weighted energy factor (WEF).

#### **I. Test Procedure for Dedicated-Purpose Pool Pumps**

##### *A. General*

A.1 *Test Method.* To determine the weighted energy factor (WEF) for dedicated-purpose pool pumps, perform “wire-to-water” testing in accordance with HI 40.6–2014–B, except section 40.6.4.1, “Vertically suspended pumps”; section 40.6.4.2, “Submersible pumps”; section 40.6.5.3, “Test report”; section 40.6.5.5, “Test

conditions”; section 40.6.5.5.2, “Speed of rotation during testing”; section 40.6.6.1, “Translation of test results to rated speed of rotation”; section 40.6.6.2, “Pump efficiency”; section 40.6.6.3, “Performance curve”; section A.7, “Testing at temperatures exceeding 30 °C (86 °F)”; and appendix B, “Reporting of test results”; (incorporated by reference, see § 431.463) with the modifications and additions as noted throughout the provisions below. Do not use the test points specified in section 40.6.5.5.1, “Test procedure” of HI 40.6–2014–B and instead use those test points specified in section D.3 of this appendix for the applicable dedicated-purpose pool pump variety and speed configuration. When determining overall efficiency, best efficiency point, or other applicable pump energy performance information, section 40.6.5.5.1, “Test procedure”; section 40.6.6.2, “Pump efficiency”; and section 40.6.6.3, “Performance curve” must be used, as applicable. For the purposes of applying this appendix, the term “volume per unit time,” as defined in section 40.6.2, “Terms and definitions,” of HI 40.6–2014–B shall be deemed to be synonymous with the term “flow rate” used throughout that standard and this appendix.

A.2. *Calculations and Rounding.* All terms and quantities refer to values determined in accordance with the procedures set forth in this appendix for the rated pump. Perform all calculations using raw measured values without rounding. Round WEF, EF, maximum head, vertical lift, and true priming time values to the tenths place (*i.e.*, 0.1) and rated hydraulic horsepower to the thousandths place (*i.e.*, 0.001). Round all other reported values to the hundredths place unless otherwise specified.

##### *B. Measurement Equipment*

B.1 For the purposes of measuring flow rate, speed of rotation, temperature, and pump power output, the equipment specified in HI 40.6–2014–B Appendix C (incorporated by reference, see § 431.463) necessary to measure head, speed of rotation, flow rate, and temperature must be used and must comply with the stated accuracy requirements in HI 40.6–2014–B Table 40.6.3.2.3, except as specified in section B.1.1 and B.1.2 of this appendix. When more than one instrument is used to measure a given parameter, the combined accuracy, calculated as the root sum of squares of individual instrument accuracies, must meet the specified accuracy requirements.

B.1.1 Electrical measurement equipment for determining the driver power input to the motor or controls must be capable of measuring true root mean squared (RMS) current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency, and have a combined accuracy of  $\pm 2.0$  percent of the measured value at the fundamental supply source frequency.

B.1.2 Instruments for measuring distance (*e.g.*, height above the reference plane or water level) must be accurate to and have a resolution of at least  $\pm 0.1$  inch.

B.2 *Calibration.* Calibration requirements for instrumentation are specified in appendix

D of HI 40.6–2014–B (incorporated by reference, see § 431.463). Historical calibration data may be used to justify time periods up to three times longer than those specified in table D.1 of HI 40.6–2014–B provided the supporting historical data shows maintenance of calibration of the given instrument up to the selected extended calibration interval on at least two unique occasions, based on the interval specified in HI 40.6–2014–B.

##### *C. Test Conditions and Tolerances*

C.1 *Pump Specifications.* Conduct testing at full impeller diameter in accordance with the test conditions, stabilization requirements, and specifications of HI 40.6–2014–B section 40.6.3, “Pump efficiency testing”; section 40.6.4, “Considerations when determining the efficiency of a pump”; section 40.6.5.4 (including appendix A), “Test arrangements”; and section 40.6.5.5, “Test conditions” (incorporated by reference, see § 431.463).

C.2 *Power Supply Requirements.* The following conditions also apply to the mains power supplied to the DPPP motor or controls, if any:

(1) Maintain the voltage within  $\pm 5$  percent of the rated value of the motor,

(2) Maintain the frequency within  $\pm 1$  percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within  $\pm 3$  percent of the value with which the motor was rated, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

C.3 *Test Conditions.* Testing must be carried out with water that is between 50 and 107 °F with less than or equal to 15 nephelometric turbidity units (NTU).

C.4 *Tolerances.* For waterfall pumps, multi-speed self-priming and non-self-priming pool filter pumps, and variable-speed self-priming and non-self-priming pool filter pumps all measured load points must be within  $\pm 2.5$  percent of the specified head value and comply with any specified flow values or thresholds. For all other dedicated-purpose pool pumps, all measured load points must be within the greater of  $\pm 2.5$  percent of the specified flow rate values or  $\pm 0.5$  gpm and comply with any specified head values or thresholds.

##### *D. Data Collection and Stabilization*

D.1 *Damping Devices.* Use of damping devices, as described in section 40.6.3.2.2 of HI 40.6–2014–B (incorporated by reference, see § 431.463), are only permitted to integrate up to the data collection interval used during testing.

D.2 *Stabilization.* Record data at any tested load point only under stabilized conditions, as defined in HI 40.6–2014–B section 40.6.5.5.1 (incorporated by reference, see § 431.463), where a minimum of two measurements are used to determine stabilization.

D.3 *Test Points.* Measure the flow rate in gpm, pump total head in ft, the driver power input in W, and the speed of rotation in rpm at each load point specified in Table 1 of this appendix for each DPPP variety and speed configuration:

TABLE 1—LOAD POINTS (i) AND WEIGHTS (w<sub>i</sub>) FOR EACH DPPP VARIETY AND SPEED CONFIGURATION

DPPP varieties	Speed configuration(s)	Number of load points (n)	Load point (i)	Test points		
				Flow rate (Q) (GPM)	Head (H) (ft)	Speed (rpm)
Self-Priming Pool Filter Pumps And Non-Self-Priming Pool Filter Pumps.	Single-speed dedicated-purpose pool pumps and all self-priming and non-self-priming pool filter pumps not meeting the definition of two-*, multi-, or variable-speed dedicated-purpose pool pump. Two-speed dedicated-purpose pool pumps*.	1	High .....	$Q_{high} \text{ (gpm)} = Q_{max\_speed@C}^{**}$	$H = 0.0082 \times Q_{high}^2$	Maximum speed
		2	Low .....	$Q_{low} \text{ (gpm)} = \text{Flow rate associated with specified head and speed that is not below:}$ • 31.1 gpm if rated hydraulic horsepower is >0.75 or • 24.7 gpm if rated hydraulic horsepower is ≤0.75	$H = 0.0082 \times Q_{low}^2$	Lowest speed capable of meeting the specified flow and head values, if any***.
	Multi-speed and variable-speed dedicated-purpose pool pumps.	2	High .....	$Q_{high} \text{ (gpm)} = Q_{max\_speed@C}^{**}$	$H = 0.0082 \times Q_{high}^2$	Maximum speed.
		2	Low .....	$Q_{low} \text{ (gpm)} =$ • If rated hydraulic horsepower is >0.75, then $Q_{low} \geq 31.1 \text{ gpm}$ • If rated hydraulic horsepower is ≤0.75, then $Q_{low} \geq 24.7 \text{ gpm}$	$H = 0.0082 \times Q_{low}^2$	Lowest speed capable of meeting the specified flow and head values.
Waterfall Pumps .....	Single-speed dedicated-purpose pool pumps.	1	High .....	$Q_{high} \text{ (gpm)} \geq 0.8 \times Q_{max\_speed@C}^{**}$	$H = 0.0082 \times Q_{high}^2$	Lowest speed capable of meeting the specified flow and head values.
Pressure Cleaner Booster Pumps.	Any .....	1	High .....	$Q_{low} \text{ (gpm)} = \text{Flow corresponding to specified head}$ 10.0 gpm	17.0 ft ≥60.0 ft	Maximum speed. Lowest speed capable of meeting the specified flow and head values.

\*In order to apply the test points for two-speed self-priming and non-self-priming pool filter pumps, self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower that are two-speed dedicated-purpose pool pumps must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has such capability, but without which the pump is unable to operate. Two-speed self-priming pool filter pumps greater than or equal to 0.711 rated hydraulic horsepower that do not meet these requirements must be tested using the load point for single-speed self-priming or non-self-priming pool filter pumps, as appropriate.

\*\*  $Q_{max\_speed@C}$  = Flow at max speed on curve C (gpm)

\*\*\* If a two-speed pump has a low speed that results in a flow rate below the specified values, the low speed of that pump shall not be tested.

#### E. Calculations

E.1 Determination of Weighted Energy Factor. Determine the WEF as a ratio of the measured flow and driver power input to the dedicated-purpose pool pump in accordance with the following equation:

$$WEF = \frac{\sum_{i=1}^n \left( w_i \times \frac{Q_i}{1000} \times 60 \right)}{\sum_{i=1}^n \left( w_i \times \frac{P_i}{1000} \right)}$$

Where:

WEF = Weighted Energy Factor in gal/kWh;

w<sub>i</sub> = weighting factor at each load point i, as specified in section E.2 of this appendix;

Q<sub>i</sub> = flow at each load point i, in gpm;

P<sub>i</sub> = driver power input to the motor (or controls, if present) at each load point i, in watts;

i = load point(s), defined uniquely for each DPPP variety and speed configuration as specified in section D.3 of this appendix; and

n = number of load point(s), defined uniquely for each DPPP variety and speed configuration as specified in section D.3 of this appendix.

E.2 Weights. When determining WEF, apply the weights specified in Table 2 of this appendix for the applicable load points, DPPP varieties, and speed configurations:

TABLE 2—LOAD POINT WEIGHTS (w<sub>i</sub>)

DPPP varieties	Speed configuration(s)	Load point(s) i	
		Low flow	High flow
Self-Priming Pool Filter Pumps and Non-Self-Priming Pool Filter Pumps.	Single-speed dedicated-purpose pool pumps and all self-priming and non-self-priming pool filter pumps not meeting the definition of two-*, multi-, or variable-speed dedicated-purpose pool pump.	.....	1.0
	Two-speed dedicated-purpose pool pumps* .....	0.80	0.20
	Multi-speed and variable-speed dedicated-purpose pool pumps.	0.80	0.20
Waterfall Pumps .....	Single-speed dedicated-purpose pool pumps .....	.....	1.0



TABLE 2—LOAD POINT WEIGHTS ( $w_i$ )—Continued

DPPP varieties	Speed configuration(s)	Load point(s) $i$	
		Low flow	High flow
Pressure Cleaner Booster Pump .....	Any .....	.....	1.0

\* In order to apply the test points for two-speed self-priming and non-self-priming pool filter pumps, self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower that are two-speed dedicated-purpose pool pumps must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has such capability, but without which the pump is unable to operate. Two-speed self-priming pool filter pumps greater than or equal to 0.711 rated hydraulic horsepower that do not meet these requirements must be tested using the load point for single-speed self-priming or non-self-priming pool filter pumps, as appropriate.

### E.3 Determination of Horsepower and True Power Factor Metrics

E.3.1 Determine the pump power output at any load point  $i$  using the following equation:

$$P_{u,i} = \frac{Q_i \times H_i \times SG}{3960}$$

Where:

$P_{u,i}$  = the measured pump power output at load point  $i$  of the tested pump, in hp;  
 $Q_i$  = the measured flow rate at load point  $i$  of the tested pump, in gpm;  
 $H_i$  = pump total head at load point  $i$  of the tested pump, in ft; and  
 $SG$  = the specific gravity of water at specified test conditions, which is equivalent to 1.00.

E.3.1.1 Determine the rated hydraulic horsepower as the pump power output measured on the reference curve at maximum rotating speed and full impeller diameter for the rated pump.

E.3.2 For dedicated-purpose pool pumps with single-phase AC motors or DC motors, determine the dedicated-purpose pool pump nominal motor horsepower as the product of the measured full load speed and torque, adjusted to the appropriate units, as shown in the following equation:

$$P_{nm} = \frac{(T \times n)}{5252}$$

Where:

$P_{nm}$  = the dedicated-purpose pool pump nominal total horsepower at full load, in hp;  
 $T$  = output torque at full load, in lb-ft; and  
 $n$  = the motor speed at full load, in rpm.

Full-load speed and torque shall be determined based on the maximum continuous duty motor power output rating allowable for the motor's nameplate ambient rating and insulation class.

E.3.2.1 For single-phase AC motors, determine the measured speed and torque at full load according to either section E.3.2.1.1 or E.3.2.1.2 of this appendix.

E.3.2.1.1 Use the procedures in section 3.2, "Tests with load"; section 4 "Testing facilities"; section 5.2 "Mechanical measurements"; and section 5.3 "Temperature measurements"; and section 6 "Tests" of IEEE 114–2010 (incorporated by reference, see § 431.463), or

E.3.2.1.2 Use the applicable procedures in section 5, "General test requirements" and

section 6, "Tests" of CSA C747–2009 (RA 2014); except in section 6.4(b) the conversion factor shall be 5252, only measurements at full load are required in section 6.5, and section 6.6 shall be disregarded (incorporated by reference, see § 431.463).

E.3.2.2 For DC motors, determine the measured speed and torque at full load according to either section E.3.2.2.1 or E.3.2.2.2 of this appendix.

E.3.2.2.1 Use the procedures in section 3.1, "Instrument Selection Factors"; section 3.4 "Power Measurement": Section 3.5 "Power Sources"; section 4.1.2 "Ambient Air"; section 4.1.4 "Direction of Rotation"; section 5.4.1 "Reference Conditions"; and section 5.4.3.2 "Dynamometer or Torquemeter Method" of IEEE 113–1985 (incorporated by reference, see § 431.463), or

E.3.2.2.2 Use the applicable procedures in section 5, "General test requirements" and section 6, "Tests" of CSA C747–2009 (RA 2014); except in section 6.4(b) the conversion factor shall be 5252, only measurements at full load are required in section 6.5, and section 6.6 shall be disregarded (incorporated by reference, see § 431.463).

E.3.3 For dedicated-purpose pool pumps with single-phase AC motors or DC motors, the dedicated-purpose pool pump service factor is equal to 1.0.

E.3.4 Determine the dedicated-purpose pool pump motor total horsepower according to section E.3.4.1 of this appendix for dedicated-purpose pool pumps with single-phase AC motors or DC motors and section E.3.4.2 of this appendix for dedicated-purpose pool pumps with polyphase AC motors.

E.3.4.1 For dedicated-purpose pool pumps with single-phase AC motors or DC motors, determine the dedicated-purpose pool pump motor total horsepower as the product of the dedicated-purpose pool pump nominal motor horsepower, determined in accordance with section E.3.2 of this appendix, and the dedicated-purpose pool pump service factor, determined in accordance with section E.3.3 of this appendix.

E.3.4.2 For dedicated-purpose pool pumps with polyphase AC induction motors, determine the dedicated-purpose pool pump motor total horsepower as the product of the rated nominal motor horsepower and the rated service factor of the motor.

E.3.5 Determine the true power factor at each applicable load point specified in Table 1 of this appendix for each DPPP variety and speed configuration as a ratio of driver power

input to the motor (or controls, if present) ( $P_i$ ), in watts, divided by the product of the voltage in volts and the current in amps at each load point  $i$ , as shown in the following equation:

$$PF_i = \frac{P_i}{V_i \times I_i}$$

Where:

$PF_i$  = true power factor at each load point  $i$ , dimensionless;  
 $P_i$  = driver power input to the motor (or controls, if present) at each load point  $i$ , in watts;  
 $V_i$  = voltage at each load point  $i$ , in volts;  
 $I_i$  = current at each load point  $i$ , in amps; and  
 $i$  = load point(s), defined uniquely for each DPPP variety and speed configuration as specified in section D.3 of this appendix.

### E.4 Determination of Maximum Head.

Determine the maximum head for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps by measuring the head at maximum speed and the minimum flow rate at which the pump is designed to operate continuously or safely, where the minimum flow rate is assumed to be zero unless stated otherwise in the manufacturer literature.

### F. Determination of Self-Priming Capability

F.1 Test Method. Determine the vertical lift and true priming time of non-self-priming pool filter pumps and self-priming pool filter pumps that are not already certified as self-priming under NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) by testing such pumps pursuant to section C.3 of appendix C of NSF/ANSI 50–2015, except for the modifications and exceptions listed in the following sections F.1.1 through F.1.5 of this appendix:

F.1.1 Where section C.3.2, "Apparatus," and section C.3.4, "Self-priming capability test method," of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) state that the "suction line must be essentially as shown in annex C, figure C.1;" the phrase "essentially as shown in Annex C, figure C.1" means:

- The centerline of the pump impeller shaft is situated a vertical distance equivalent to the specified vertical lift (VL), calculated in accordance with section F.1.1.1. of this appendix, above the water level of a water tank of sufficient volume as to maintain a constant water surface level for the duration of the test;

- The pump draws water from the water tank with a riser pipe that extends below the water level a distance of at least 3 times the riser pipe diameter (*i.e.*, 3 pipe diameters);

- The suction inlet of the pump is at least 5 pipe diameters from any obstructions, 90° bends, valves, or fittings; and
- The riser pipe is of the same pipe diameter as the pump suction inlet.

F.1.1.1 The vertical lift (VL) must be normalized to 5.0 feet at an atmospheric pressure of 14.7 psia and a water density of 62.4 lb/ft<sup>3</sup> in accordance with the following equation:

$$VL = 5.0ft \times \left( \frac{62.4 \text{ lb/ft}^3}{\rho_{test}} \right) \times \left( \frac{P_{abs,test}}{14.7psia} \right)$$

Where:

VL = vertical lift of the test apparatus from the waterline to the centerline of the pump impeller shaft, in ft;  
 $\rho_{test}$  = density of test fluid, in lb/ft<sup>3</sup>; and  
 $P_{abs,test}$  = absolute barometric pressure of test apparatus location at centerline of pump impeller shaft, in psia.

F.1.2 The equipment accuracy requirements specified in section B, “Measurement Equipment,” of this appendix also apply to this section F, as applicable.

F.1.2.1 All measurements of head (gauge pressure), flow, and water temperature must be taken at the pump suction inlet and all head measurements must be normalized back to the centerline of the pump impeller shaft in accordance with section A.3.1.3.1 of HI

40.6–2014–B (incorporated by reference, see § 431.463).

F.1.3 All tests must be conducted with clear water that meets the requirements adopted in section C.3 of this appendix.

F.1.4 In section C.3.4, “Self-priming capability test method,” of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463), “the elapsed time to steady discharge gauge reading or full discharge flow” is determined when the changes in head and flow, respectively, are within the tolerance values specified in table 40.6.3.2.2, “Permissible amplitude of fluctuation as a percentage of mean value of quantity being measured at any test point,” of HI 40.6–2014–B (incorporated by reference, see § 431.463). The measured priming time

(MPT) is determined as the point in time when the stabilized load point is first achieved, not when stabilization is determined. In addition, the true priming time (TPT) is equivalent to the MPT.

F.1.5 The maximum true priming time for each test run must not exceed 10.0 minutes. Disregard section C.3.5 of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463).

#### G. Optional Testing and Calculations

G.1 Energy Factor. When making representations regarding the EF of dedicated-purpose pool pumps, determine EF on one of four system curves (A, B, C, or D) and at any given speed (s) according to the following equation:

$$EF_{X,s} = \frac{\left( \frac{Q_{X,s}}{1,000} \times 60 \right)}{\left( \frac{P_{X,s}}{1,000} \right)}$$

Where:

$EF_{X,s}$  = the energy factor on system curve X at speed s in gal/Wh;  
X = one of four possible system curves (A, B, C, or D), as defined in section G.1.1 of this appendix;  
s = the tested speed, in rpm;  
 $Q_{X,s}$  = flow rate measured on system curve X at speed s in gpm; and  
 $P_{X,s}$  = driver power input to the motor (or controls, if present) on system curve X at speed s in watts.

G.1.1 System Curves. The energy factor may be determined at any speed (s) and on any of the four system curves A, B, C, and/or D specified in the Table 3:

TABLE 3—SYSTEMS CURVES FOR OPTIONAL EF TEST PROCEDURE

System curve	System curve equation *
A .....	$H = 0.0167 \times Q^2$
B .....	$H = 0.0500 \times Q^2$
C .....	$H = 0.0082 \times Q^2$
D .....	$H = 0.0044 \times Q^2$

\* In the above table, Q refers to the flow rate in gpm and H refers to head in ft.

G.2 Replacement Dedicated-Purpose Pool Pump Motors. To determine the WEF for replacement DPPP motors, test each

replacement DPPP motor paired with each dedicated-purpose pool pump bare pump for which the replacement DPPP motor is advertised to be paired, as stated in the manufacturer's literature for that replacement DPPP motor model, according to the testing and calculations described in sections A, B, C, D, and E of this appendix. Alternatively, each replacement DPPP motor may be tested with the most consumptive dedicated-purpose pool pump bare pump for which it is advertised to be paired, as stated in the manufacturer's literature for that replacement DPPP motor model. If a replacement DPPP motor is not advertised to be paired with any specific dedicated-purpose pool pump bare pumps, test with the most consumptive dedicated-purpose pool pump bare pump available.

#### Appendix C to Subpart Y of Part 431—Uniform Test Method for the Measurement of Energy Efficiency of Dedicated-Purpose Pool Pumps

**Note:** Any representations made on or after July 19, 2021, with respect to the energy use or efficiency of dedicated-purpose pool pumps subject to testing pursuant to 10 CFR 431.464(b) must be made in accordance with the results of testing pursuant to this appendix.

#### I. Test Procedure for Dedicated-Purpose Pool Pumps

##### A. General

A.1 Test Method. To determine the weighted energy factor (WEF) for dedicated-purpose pool pumps, perform “wire-to-water” testing in accordance with HI 40.6–2014–B, except section 40.6.4.1, “Vertically suspended pumps”; section 40.6.4.2, “Submersible pumps”; section 40.6.5.3, “Test report”; section 40.6.5.5, “Test conditions”; section 40.6.5.2, “Speed of rotation during testing”; section 40.6.6.1, “Translation of test results to rated speed of rotation”; section 40.6.6.2, “Pump efficiency”; section 40.6.6.3, “Performance curve”; section A.7, “Testing at temperatures exceeding 30 °C (86 °F)”; and appendix B, “Reporting of test results”; (incorporated by reference, see § 431.463) with the modifications and additions as noted throughout the provisions below. Do not use the test points specified in section 40.6.5.5.1, “Test procedure” of HI 40.6–2014–B and instead use those test points specified in section D.3 of this appendix for the applicable dedicated-purpose pool pump variety and speed configuration. When determining overall efficiency, best efficiency point, or other applicable pump energy performance information, section 40.6.5.5.1, “Test procedure”; section 40.6.6.2, “Pump efficiency”; and section 40.6.6.3,

“Performance curve” must be used, as applicable. For the purposes of applying this appendix, the term “volume per unit time,” as defined in section 40.6.2, “Terms and definitions,” of HI 40.6–2014–B shall be deemed to be synonymous with the term “flow rate” used throughout that standard and this appendix.

A.2 Calculations and Rounding. All terms and quantities refer to values determined in accordance with the procedures set forth in this appendix for the rated pump. Perform all calculations using raw measured values without rounding. Round WEF, maximum head, vertical lift, and true priming time values to the tenths place (*i.e.*, 0.1) and rated hydraulic horsepower to the thousandths place (*i.e.*, 0.001). Round all other reported values to the hundredths place unless otherwise specified.

#### B. Measurement Equipment

B.1 For the purposes of measuring flow rate, speed of rotation, temperature, and pump power output, the equipment specified in HI 40.6–2014–B Appendix C (incorporated by reference, see § 431.463) necessary to measure head, speed of rotation, flow rate, and temperature must be used and must comply with the stated accuracy requirements in HI 40.6–2014–B Table 40.6.3.2.3, except as specified in sections B.1.1 and B.1.2 of this appendix. When more than one instrument is used to measure a given parameter, the combined accuracy, calculated as the root sum of squares of individual instrument accuracies, must meet the specified accuracy requirements.

B.1.1 Electrical measurement equipment for determining the driver power input to the motor or controls must be capable of measuring true root mean squared (RMS) current, true RMS voltage, and real power up

to the 40th harmonic of fundamental supply source frequency, and have a combined accuracy of  $\pm 2.0$  percent of the measured value at the fundamental supply source frequency.

B.1.2 Instruments for measuring distance (*e.g.*, height above the reference plane or water level) must be accurate to and have a resolution of at least  $\pm 0.1$  inch.

B.2 Calibration. Calibration requirements for instrumentation are specified in appendix D of HI 40.6–2014–B (incorporated by reference, see § 431.463). Historical calibration data may be used to justify time periods up to three times longer than those specified in table D.1 of HI 40.6–2014–B provided the supporting historical data shows maintenance of calibration of the given instrument up to the selected extended calibration interval on at least two unique occasions, based on the interval specified in HI 40.6–2014–B.

#### C. Test Conditions and Tolerances

C.1 Pump Specifications. Conduct testing at full impeller diameter in accordance with the test conditions, stabilization requirements, and specifications of HI 40.6–2014–B section 40.6.3, “Pump efficiency testing”; section 40.6.4, “Considerations when determining the efficiency of a pump”; section 40.6.5.4 (including appendix A), “Test arrangements”; and section 40.6.5.5, “Test conditions” (incorporated by reference, see § 431.463).

C.2 Power Supply Requirements. The following conditions also apply to the mains power supplied to the DPPP motor or controls, if any:

- (1) Maintain the voltage within  $\pm 5$  percent of the rated value of the motor,
- (2) Maintain the frequency within  $\pm 1$  percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within  $\pm 3$  percent of the value with which the motor was rated, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

C.3 Test Conditions. Testing must be carried out with water that is between 50 and 107 °F with less than or equal to 15 nephelometric turbidity units (NTU).

C.4 Tolerances. For waterfall pumps, multi-speed self-priming and non-self-priming pool filter pumps, and variable-speed self-priming and non-self-priming pool filter pumps all measured load points must be within  $\pm 2.5$  percent of the specified head value and comply with any specified flow values or thresholds. For all other dedicated-purpose pool pumps, all measured load points must be within the greater of  $\pm 2.5$  percent of the specified flow rate values or  $\pm 0.5$  gpm and comply with any specified head values or thresholds.

#### D. Data Collection and Stabilization

D.1 Damping Devices. Use of damping devices, as described in section 40.6.3.2.2 of HI 40.6–2014–B (incorporated by reference, see § 431.463), are only permitted to integrate up to the data collection interval used during testing.

D.2 Stabilization. Record data at any tested load point only under stabilized conditions, as defined in HI 40.6–2014–B section 40.6.5.5.1 (incorporated by reference, see § 431.463), where a minimum of two measurements are used to determine stabilization.

D.3 Test Points. Measure the flow rate in gpm, pump total head in ft, the driver power input in W, and the speed of rotation in rpm at each load point specified in Table 1 of this appendix for each DPPP variety and speed configuration:

TABLE 1—LOAD POINTS (i) AND WEIGHTS (w<sub>i</sub>) FOR EACH DPPP VARIETY AND SPEED CONFIGURATION

DPPP varieties	Speed configuration(s)	Number of load points (n)	Load point (i)	Test points		
				Flow rate (Q) (GPM)	Head (H) (ft)	Speed (rpm)
Self-Priming Pool Filter Pumps And Non-Self-Priming Pool Filter Pumps.	Single-speed dedicated-purpose pool pumps and all self-priming and non-self-priming pool filter pumps not meeting the definition of two-, multi-, or variable-speed dedicated-purpose pool pump.	1	High .....	$Q_{\text{high}} \text{ (gpm)} = Q_{\text{max\_speed}} @ C^{**}$	$H = 0.0082 \times Q_{\text{high}}^2$	Maximum speed.
		2	Low .....	$Q_{\text{low}} \text{ (gpm)} = \text{Flow rate associated with specified head and speed that is not below:}$ <ul style="list-style-type: none"> <li>• 31.1 gpm if rated hydraulic horsepower is <math>&gt;0.75</math> or</li> <li>• 24.7 gpm if rated hydraulic horsepower is <math>\leq 0.75</math></li> </ul>	$H = 0.0082 \times Q_{\text{low}}^2$	Lowest speed capable of meeting the specified flow and head values, if any.***
	Multi-speed and variable-speed dedicated-purpose pool pumps.	2	High .....	$Q_{\text{high}} \text{ (gpm)} = Q_{\text{max\_speed}} @ C^{**}$	$H = 0.0082 \times Q_{\text{low}}^2$	Maximum speed.
			Low .....	$Q_{\text{low}} \text{ (gpm)} =$ <ul style="list-style-type: none"> <li>• If rated hydraulic horsepower is <math>&gt;0.75</math>, then <math>Q_{\text{low}} \geq 31.1</math> gpm</li> <li>• If rated hydraulic horsepower is <math>\leq 0.75</math>, then <math>Q_{\text{low}} \geq 24.7</math> gpm</li> </ul>	$H = 0.0082 \times Q_{\text{low}}^2$	Lowest speed capable of meeting the specified flow and head values.
		2	High .....	$Q_{\text{high}} \text{ (gpm)} \geq 0.8 \times Q_{\text{max\_speed}} @ C^{**}$	$H = 0.0082 \times Q_{\text{high}}^2$	Lowest speed capable of meeting the specified flow and head values.
			Low .....			

TABLE 1—LOAD POINTS (i) AND WEIGHTS (w<sub>i</sub>) FOR EACH DPPP VARIETY AND SPEED CONFIGURATION—Continued

DPPP varieties	Speed configuration(s)	Number of load points (n)	Load point (i)	Test points		
				Flow rate (Q) (GPM)	Head (H) (ft)	Speed (rpm)
Waterfall Pumps .....	Single-speed dedicated-purpose pool pumps.	1	High .....	Q <sub>low</sub> (gpm) = Flow corresponding to specified head	17.0 ft	Maximum speed.
Pressure Cleaner Booster Pumps.	Any .....	1	High .....	10.0 gpm	≥60.0 ft	Lowest speed capable of meeting the specified flow and head values.

\*In order to apply the test points for two-speed self-priming and non-self-priming pool filter pumps, self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower that are two-speed dedicated-purpose pool pumps must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has such capability, but without which the pump is unable to operate. Two-speed self-priming pool filter pumps greater than or equal to 0.711 rated hydraulic horsepower that do not meet these requirements must be tested using the load point for single-speed self-priming or non-self-priming pool filter pumps, as appropriate.

\*\*Q<sub>max speed@C</sub> = Flow at max speed on curve C (gpm).

\*\*\*If a two-speed pump has a low speed that results in a flow rate below the specified values, the low speed of that pump shall not be tested.

### E. Calculations

E.1 Determination of Weighted Energy Factor. Determine the WEF as a ratio of the measured flow and driver power input to the dedicated-purpose pool pump in accordance with the following equation:

$$WEF = \frac{\sum_{i=1}^n \left( w_i \times \frac{Q_i}{1000} \times 60 \right)}{\sum_{i=1}^n \left( w_i \times \frac{P_i}{1000} \right)}$$

Where:

WEF = Weighted Energy Factor in kgal/kWh;

W<sub>i</sub> = weighting factor at each load point *i*, as specified in section E.2 of this appendix;

Q<sub>i</sub> = flow at each load point *i*, in gpm;

P<sub>i</sub> = driver power input to the motor (or controls, if present) at each load point *i*, in watts;

*i* = load point(s), defined uniquely for each DPPP variety and speed configuration as specified in section D.3 of this appendix; and

*n* = number of load point(s), defined uniquely for each DPPP variety and speed configuration as specified in section D.3 of this appendix.

E.2 Weights. When determining WEF, apply the weights specified in Table 2 of this appendix for the applicable load points, DPPP varieties, and speed configurations:

TABLE 2—LOAD POINT WEIGHTS (w<sub>i</sub>)

DPPP varieties	Speed configuration(s)	Load point(s) <i>i</i>	
		Low flow	High flow
Self-Priming Pool Filter Pumps and Non-Self-Priming Pool Filter Pumps.	Single-speed dedicated-purpose pool pumps and all self-priming and non-self-priming pool filter pumps not meeting the definition of two-, multi-, or variable-speed dedicated-purpose pool pump.	.....	1.0
	Two-speed dedicated-purpose pool pumps * .....	0.80	0.20
	Multi-speed and variable-speed dedicated-purpose pool pumps.	0.80	0.20
Waterfall Pumps .....	Single-speed dedicated-purpose pool pumps .....	.....	1.0
Pressure Cleaner Booster Pump .....	Any .....	.....	1.0

\*In order to apply the test points for two-speed self-priming and non-self-priming pool filter pumps, self-priming pool filter pumps that are greater than or equal to 0.711 rated hydraulic horsepower that are two-speed dedicated-purpose pool pumps must also be distributed in commerce either: (1) With a pool pump control (variable speed drive and user interface or switch) that changes the speed in response to pre-programmed user preferences and allows the user to select the duration of each speed and/or the on/off times or (2) without a pool pump control that has such capability, but without which the pump is unable to operate. Two-speed self-priming pool filter pumps greater than or equal to 0.711 rated hydraulic horsepower that do not meet these requirements must be tested using the load point for single-speed self-priming or non-self-priming pool filter pumps, as appropriate.

### E.3 Determination of Horsepower and True Power Factor Metrics

E.3.1 Determine the pump power output at any load point *i* using the following equation:

$$P_{u,i} = \frac{Q_i \times H_i \times SG}{3960}$$

Where:

P<sub>u,i</sub> = the measured pump power output at load point *i* of the tested pump, in hp;

Q<sub>i</sub> = the measured flow rate at load point *i* of the tested pump, in gpm;

H<sub>i</sub> = pump total head at load point *i* of the tested pump, in ft; and

SG = the specific gravity of water at specified test conditions, which is equivalent to 1.00.

E.3.1.1 Determine the rated hydraulic horsepower as the pump power output measured on the reference curve at maximum rotating speed and full impeller diameter for the rated pump.

E.3.2 For dedicated-purpose pool pumps with single-phase AC motors or DC motors, determine the dedicated-purpose pool pump nominal motor horsepower as the product of the measured full load speed and torque, adjusted to the appropriate units, as shown in the following equation:

$$P_{nm} = \frac{(T \times n)}{5252}$$

Where:

P<sub>nm</sub> = the dedicated-purpose pool pump nominal total horsepower at full load, in hp;

T = output torque at full load, in lb-ft; and

n = the motor speed at full load, in rpm.

Full-load speed and torque shall be determined based on the maximum continuous duty motor power output rating allowable for the motor's nameplate ambient rating and insulation class.

E.3.2.1 For single-phase AC motors, determine the measured speed and torque at

full load according to either section E.3.2.1.1 or E.3.2.1.2 of this appendix.

E.3.2.1.1 Use the procedures in section 3.2, “Tests with load”; section 4 “Testing facilities”; section 5.2 “Mechanical measurements”; section 5.3 “Temperature measurements”; and section 6 “Tests” of IEEE 114–2010 (incorporated by reference, see § 431.463), or

E.3.2.1.2 Use the applicable procedures in section 5, “General test requirements” and section 6, “Tests” of CSA C747–2009 (RA 2014); except in section 6.4(b) the conversion factor shall be 5252, only measurements at full load are required in section 6.5, and section 6.6 shall be disregarded (incorporated by reference, see § 431.463).

E.3.2.2 For DC motors, determine the measured speed and torque at full load according to either section E.3.2.2.1 or E.3.2.2.2 of this appendix.

E.3.2.2.1 Use the procedures in section 3.1, “Instrument Selection Factors”; section 3.4 “Power Measurement”; Section 3.5 “Power Sources”; section 4.1.2 “Ambient Air”; section 4.1.4 “Direction of Rotation”; section 5.4.1 “Reference Conditions”; and section 5.4.3.2 “Dynamometer or Torquemeter Method” of IEEE 113–1985 (incorporated by reference, see § 431.463), or

E.3.2.2.2 Use the applicable procedures in section 5, “General test requirements” and section 6, “Tests” of CSA C747–2009 (RA 2014); except in section 6.4(b) the conversion factor shall be 5252, only measurements at full load are required in section 6.5, and section 6.6 shall be disregarded (incorporated by reference, see § 431.463).

E.3.3 For dedicated-purpose pool pumps with single-phase AC motors or DC motors, the dedicated-purpose pool pump service factor is equal to 1.0.

E.3.4 Determine the dedicated-purpose pool pump motor total horsepower according to section E.3.4.1 of this appendix for dedicated-purpose pool pumps with single-phase AC motors or DC motors and section E.3.4.2 of this appendix for dedicated-

purpose pool pumps with polyphase AC motors.

E.3.4.1 For dedicated-purpose pool pumps with single-phase AC motors or DC motors, determine the dedicated-purpose pool pump motor total horsepower as the product of the dedicated-purpose pool pump nominal motor horsepower, determined in accordance with section E.3.2 of this appendix, and the dedicated-purpose pool pump service factor, determined in accordance with section E.3.3 of this appendix.

E.3.4.2 For dedicated-purpose pool pumps with polyphase AC induction motors, determine the dedicated-purpose pool pump motor total horsepower as the product of the rated nominal motor horsepower and the rated service factor of the motor.

E.3.5 Determine the true power factor at each applicable load point specified in Table 1 of this appendix for each DPPP variety and speed configuration as a ratio of driver power input to the motor (or controls, if present) ( $P_i$ ), in watts, divided by the product of the voltage in volts and the current in amps at each load point  $i$ , as shown in the following equation:

$$PF_i = \frac{P_i}{V_i \times I_i}$$

Where:

$PF_i$  = true power factor at each load point  $i$ , dimensionless;

$P_i$  = driver power input to the motor (or controls, if present) at each load point  $i$ , in watts;

$V_i$  = voltage at each load point  $i$ , in volts;

$I_i$  = current at each load point  $i$ , in amps; and

$i$  = load point(s), defined uniquely for each DPPP variety and speed configuration as specified in section D.3 of this appendix.

E.4 Determination of Maximum Head. Determine the maximum head for self-priming pool filter pumps, non-self-priming pool filter pumps, and waterfall pumps by measuring the head at maximum speed and

the minimum flow rate at which the pump is designed to operate continuously or safely, where the minimum flow rate is assumed to be zero unless stated otherwise in the manufacturer literature.

#### F. Determination of Self-Priming Capability

F.1 Test Method. Determine the vertical lift and true priming time of non-self-priming pool filter pumps and self-priming pool filter pumps that are not already certified as self-priming under NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) by testing such pumps pursuant to section C.3 of appendix C of NSF/ANSI 50–2015, except for the modifications and exceptions listed in the following sections F.1.1 through F.1.5 of this appendix:

F.1.1 Where section C.3.2, “Apparatus,” and section C.3.4, “Self-priming capability test method,” of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463) state that the “suction line must be essentially as shown in annex C, figure C.1;” the phrase “essentially as shown in Annex C, figure C.1” means:

(1) The centerline of the pump impeller shaft is situated a vertical distance equivalent to the specified vertical lift (VL), calculated in accordance with section F.1.1.1. of this appendix, above the water level of a water tank of sufficient volume as to maintain a constant water surface level for the duration of the test;

(2) The pump draws water from the water tank with a riser pipe that extends below the water level a distance of at least 3 times the riser pipe diameter (*i.e.*, 3 pipe diameters);

(3) The suction inlet of the pump is at least 5 pipe diameters from any obstructions, 90° bends, valves, or fittings; and

(4) The riser pipe is of the same pipe diameter as the pump suction inlet.

F.1.1.1 The vertical lift (VL) must be normalized to 5.0 feet at an atmospheric pressure of 14.7 psia and a water density of 62.4 lb/ft<sup>3</sup> in accordance with the following equation:

$$VL = 5.0ft \times \left( \frac{62.4 lb/ft^3}{\rho_{test}} \right) \times \left( \frac{P_{abs,test}}{14.7psia} \right)$$

Where:

VL = vertical lift of the test apparatus from the waterline to the centerline of the pump impeller shaft, in ft;

$\rho_{test}$  = density of test fluid, in lb/ft<sup>3</sup>; and

$P_{abs,test}$  = absolute barometric pressure of test apparatus location at centerline of pump impeller shaft, in psia.

F.1.2 The equipment accuracy requirements specified in section B, “Measurement Equipment,” of this appendix also apply to this section F, as applicable.

F.1.2.1 All measurements of head (gauge pressure), flow, and water temperature must be taken at the pump suction inlet and all

head measurements must be normalized back to the centerline of the pump impeller shaft in accordance with section A.3.1.3.1 of HI 40.6–2014–B (incorporated by reference, see § 431.463).

F.1.3 All tests must be conducted with clear water that meets the requirements adopted in section C.3 of this appendix.

F.1.4 In section C.3.4, “Self-priming capability test method,” of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463), “the elapsed time to steady discharge gauge reading or full discharge flow” is determined when the changes in head and flow, respectively, are within the tolerance values specified in table 40.6.3.2.2,

“Permissible amplitude of fluctuation as a percentage of mean value of quantity being measured at any test point,” of HI 40.6–2014–B (incorporated by reference, see § 431.463). The measured priming time (MPT) is determined as the point in time when the stabilized load point is first achieved, not when stabilization is determined. In addition, the true priming time (TPT) is equivalent to the MPT.

F.1.5 The maximum true priming time for each test run must not exceed 10.0 minutes. Disregard section C.3.5 of NSF/ANSI 50–2015 (incorporated by reference, see § 431.463).

*G. Optional Testing and Calculations*

G.1 Replacement Dedicated-Purpose Pool Pump Motors. To determine the WEF for replacement DPPP motors, test each replacement DPPP motor paired with each dedicated-purpose pool pump bare pump for which the replacement DPPP motor is advertised to be paired, as stated in the manufacturer's literature for that replacement

DPPP motor model, according to the testing and calculations described in sections A, B, C, D, and E of this appendix. Alternatively, each replacement DPPP motor may be tested with the most consumptive dedicated-purpose pool pump bare pump for which it is advertised to be paired, as stated in the manufacturer's literature for that replacement DPPP motor model. If a replacement DPPP motor is not advertised to be paired with any

specific dedicated-purpose pool pump bare pumps, test with the most consumptive dedicated-purpose pool pump bare pump available.

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## Part III

### Department of the Interior

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Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal  
Valuation Reform; Final Rule



## DEPARTMENT OF THE INTERIOR

## Office of Natural Resources Revenue

## 30 CFR Parts 1202 and 1206

[Docket No. ONRR-2017-0001; DS63644000  
DR2000000.CH7000 178D0102R2]

RIN 1012-AA20

**Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform****AGENCY:** Office of Natural Resources Revenue, Interior.**ACTION:** Final rule.**SUMMARY:** The Office of Natural Resources Revenue (ONRR) is repealing the *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule*, published July 1, 2016, and effective January 1, 2017.

Simultaneously, ONRR is reinstating the valuation regulations governing the valuation of Federal oil, Federal gas, and Federal and Indian coal that were in effect before January 1, 2017.

**DATES:** This rule is effective on September 6, 2017.**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues, contact Elizabeth Dawson at (303) 231-3653, Amy Lunt at (303) 231-3746, Peter Christnacht at (303) 231-3651, or Karl Wunderlich at (303) 231-3663.**SUPPLEMENTARY INFORMATION:****I. Background***A. General*

This final rule repeals in its entirety the *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule* (2017 Valuation Rule) that ONRR published in the **Federal Register** on July 1, 2016 (81 FR 43338), and that was effective on January 1, 2017. The 2017 Valuation Rule made changes to existing regulations governing royalty valuation and reporting practices for oil, gas, and coal. As stated in the 2017 Valuation Rule's preamble, the purpose of implementing the rule was (1) to offer greater simplicity, certainty, clarity, and consistency in product valuation for mineral lessees and mineral revenue recipients; (2) to ensure that Indian mineral lessors receive the maximum revenue from coal resources on their land, consistent with the Secretary's trust responsibility and lease terms; (3) to decrease industry's cost of compliance and ONRR's cost to ensure industry compliance; and (4) to provide early certainty to industry and to ONRR that companies have paid every dollar due. 81 FR 43338.

After the 2017 Valuation Rule was published, however, ONRR discovered several significant defects in the rule that would have undermined its purpose and intent. In addition, during the same time period (July 1, 2016, to the present) we received numerous comments from the regulated community and other members of the public, both in response to the proposed rule of repeal that we published in the **Federal Register** on April 4, 2017, and in other public forums, that were highly critical of certain provisions in the rule. In light of the defects that we discovered in the rule and after carefully considering all of the comments we received, we have decided to repeal the 2017 Valuation Rule in its entirety, principally for the following three reasons:

First, the 2017 Valuation Rule has a number of defects that make certain provisions challenging to comply with, implement, or enforce. Absent their repeal, the rule would compromise ONRR's mission to collect and account for mineral royalty revenues; could affect royalty distributions to ONRR's State and Tribal partners; and would impose a costly and unnecessary burden on Federal and Indian lessees.

Second, On March 28, 2017, the President issued E.O. 13783—Promoting Energy Independence and Economic Growth, 82 FR 16093. The executive order directs Federal agencies to review all existing regulations and other agency actions and, ultimately, to suspend, revise, or rescind any such regulations or actions that unnecessarily burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law. Based on our own internal review, as well as on the comments we received both before and during the process of promulgating this rule of repeal, we have concluded that certain provisions of the 2017 Valuation Rule would unnecessarily burden the development of Federal oil and gas and Federal and Indian coal beyond the degree necessary to protect the public interest or otherwise comply with the law.

Third, on March 29, 2017, the Secretary of the Interior (Secretary) announced that he will reestablish the Royalty Policy Committee (RPC) under the Federal Advisory Committee Act. The RPC will advise ONRR on current and emerging issues related to the determination of fair market value and the collection of royalties from energy and natural resources on Federal and Indian lands. The RPC will be composed of Federal representatives and stakeholders from energy and

mineral interests, academia, public interest groups, States, Indian Tribes, and individual Indian mineral interest owners. The RPC will provide a forum for engaging with key stakeholders and the public on many of the same issues we attempted to address in the 2017 Valuation Rule. ONRR expects that further internal assessment and analysis combined with consultations facilitated by the RPC's reestablishment will lead to the development and promulgation of a new, revised valuation rule that will address the various problems that have now been identified in the rule we are repealing.

At the same time that we are repealing the 2017 Valuation Rule, we are reinstating the regulations governing the valuation of oil, natural gas, and coal produced from Federal leases and coal produced from Indian leases that were in effect before January 1, 2017. These regulations will apply prospectively to oil, gas, and coal produced on or after the effective date that we have specified in the **DATES** section of this preamble. We intend to apply and construe the prior regulations in a manner consistent with the preambles published in conjunction with the original rulemakings and in accordance with administrative and judicial decisions interpreting these regulations.

Finally, upon taking effect, this repeal of the 2017 Valuation Rule will supersede the notification of the postponement of the effectiveness of the rule that we published in the **Federal Register** on February 27, 2017. 82 FR 11823. When this repeal takes effect, the so-called administrative stay of the rule will be lifted.

*B. Secretary's Authority To Promulgate Regulations or Reinstate Prior Regulations Under FOGRMA*

Section 301 of the Federal Oil and Gas Royalty Management Act (FOGRMA), as amended, codified at 30 U.S.C. 1751, grants the Secretary broad authority to prescribe such rules and regulations, issued in conformity with the Administrative Procedure Act (APA), as he deems reasonably necessary to create a thorough system for collecting and accounting for Federal and Indian mineral royalties. FOGRMA creates the legal framework for the collection and accounting system, but FOGRMA also grants the Secretary, acting through ONRR, broad discretion as to how to build it out. Put another way (as courts sometimes have), FOGRMA grants the Secretary, acting through ONRR, broad discretion to regulate interstitially to interpret and implement the statute.

There is not a single right way for ONRR to exercise its congressionally

delegated authority to interpret and implement FOGRMA; on the contrary, there are many ways in which ONRR may legitimately accomplish its task, as long as the way it chooses is consistent with the statutory language and the congressionally prescribed legal framework. ONRR believes that the prior regulations, which will be reinstated by this final rule, are fully consistent with FOGRMA and other applicable federal statutes and are an effective and efficient means of valuing Federal and Indian minerals, as evidenced by their long and successful use before the promulgation of the 2017 Valuation Rule.

#### *C. Chronology of Events Following Promulgation of 2017 Valuation Rule*

On July 1, 2016, ONRR published the final 2017 Valuation Rule in the **Federal Register**. Although the rule took effect on January 1, 2017, first reports and royalty payments under it were not due until February 28, 2017.

To facilitate the transition to the new regulations, ONRR conducted eleven training sessions for industry reporters in different locations between October 17, 2016, and December 15, 2016. We designed the training sessions to educate affected parties on how to value production and report and pay royalties under the 2017 Valuation Rule. The trainings also provided a forum in which lessees could ask us questions about the rule and how ONRR would implement and enforce it. At the same time that ONRR was conducting the trainings and reviewing comments and questions about the rule, ONRR was also receiving numerous written requests for guidance that asked many of the same questions that were being raised at the live sessions.

The feedback we received through the training sessions and guidance requests revealed certain unforeseen defects in, or unintended consequences of, portions of the 2017 Valuation Rule. Lessees raised multiple questions that ONRR had not previously considered and was not prepared or able to answer, particularly with respect to the coal valuation provisions. For example, lessees argued that valuing coal based on the first arm's-length sale of coal as electricity is a difficult task because the sale price of electricity does not reflect the value of coal in a simple, predictable fashion—electricity markets are too diverse and complex to trace electricity prices back to the lease. Lessees also asked questions about how to value coal production in certain non-arm's-length transactions under the new definition of “coal cooperative.” And lessees asked ONRR specific questions that we had

not previously considered about how, and under what circumstances, we would implement the default provision with respect to oil, gas, and coal. At bottom, by the middle of December 2016 we had become aware that the rule contained several defects that, at a minimum, would seriously complicate, and probably compromise, ONRR's ability to implement and enforce certain provisions.

On December 29, 2016, three different sets of petitioners, some of whom had previously requested guidance from ONRR, filed three separate petitions challenging the 2017 Valuation Rule in the United States District Court for the District of Wyoming. The petitioners alleged that the rule created widespread uncertainty about reporting and payment of royalties, and in some respects, was unreasonably difficult to comply with. The petitioners' arguments echoed the questions and concerns that had been raised at the reporter training sessions and in various guidance requests.

By late January 2017 we recognized that implementing the 2017 Valuation Rule would be contrary to the rule's stated purpose of offering greater simplicity, certainty, clarity, and consistency in product valuation. We also recognized that the defects in the rule were significant enough that implementation could undermine and compromise ONRR's mission to collect, account for, and verify mineral royalties for the United States and its State and Tribal partners.

With the February 28, 2017, reporting deadline approaching and while we were actively considering internally what to do about the previously identified defects in the 2017 Valuation Rule, the petitioners in the litigation sent ONRR a letter (dated February 17, 2017) requesting that ONRR postpone the rule's effective date. Prompted by that request, but based on ONRR's own independent assessment of the defects in the rule and the harm that could result by requiring lessees to comply with it, we decided that it was in the best interest of the regulated community, the royalty beneficiaries, and the public in general to preserve the regulatory status quo while the litigation was pending. Accordingly, on February 27, 2017, we published in the **Federal Register** a notification postponing the effectiveness of the rule pursuant to 5 U.S.C. 705 of the APA, pending judicial review. 82 FR 11823.

Meanwhile, the nation had elected a new President in November 2016, and the new administration had taken office on January 20, 2017. On March 28, 2017, the President issued E.O. 13783—

Promoting Energy Independence and Economic Growth, 82 FR 16093, which directed the heads of executive agencies to review all existing regulations, orders, guidance documents, policies, and other similar agency actions that potentially burden the development or use of domestically produced energy resources and, ultimately, to suspend, revise, or rescind those agency actions that do so unnecessarily. The executive order provided additional impetus to our ongoing review of the 2017 Valuation Rule, and we discovered some additional substantive problems with the rule.

As a result of all of those developments, on April 4, 2017, we published in the **Federal Register** a notice proposing to repeal the 2017 Valuation Rule in its entirety and soliciting public comment on the proposal. 82 FR 16323. At the same time, we recognized that certain provisions in the 2017 Valuation Rule had been, and continued to be, well received. Therefore, concurrent with the proposed repeal, we also published an Advance Notice of Proposed Rulemaking soliciting public comment on two scenarios: (1) If the 2017 Valuation Rule were repealed, whether a new valuation rule is needed and, if so, what particular issues the new valuation rule should address; and (2) if the 2017 Valuation Rule were not repealed, what changes should be made to the rule (82 FR 16325, April 4, 2017).

The comment period for the proposed repeal rule closed on May 4, 2017. We received more than a thousand comments from 2,342 commenters both for and against repeal. We carefully considered all of the comments we received and, for the reasons discussed further below, have decided at this time to repeal the 2017 Valuation Rule in its entirety. ONRR will continue to assess the substantive issues addressed in the 2017 Valuation Rule and expects to in the near future promulgate a new, revised valuation rule that will address the various problems that have been identified in the rule we are repealing.

#### *D. Substantive Defects in, and Administrative Challenges Posed by, the 2017 Valuation Rule*

##### *1. Valuing Coal Using the Sale Price of Electricity*

The 2017 Valuation Rule required lessees to value certain non-arm's-length sales of Federal and Indian coal based on the first arm's-length sale of electricity. For several reasons we have concluded that this provision of the rule is unnecessarily complicated and burdensome to implement or enforce.

ONRR has long valued oil, gas, and coal based on the first arm's-length sale of the resource because we believe that such sales are the best indicator of market value. In promulgating the 2017 Valuation Rule, ONRR incorrectly assumed that it would be reasonable for lessees to "net back" to the value of coal from arm's-length electrical sales, the same way that lessees "net back" to value from the first arm's-length sale by an affiliate. We also incorrectly assumed that using such sales would accurately reflect the value of coal because the majority of coal mined from Federal and Indian lands is used to generate electricity. But we failed to fully consider other factors that determine what a generating company charges for its electricity. The price of electricity also reflects the company's costs to construct, operate, and maintain its depreciable capital assets; its costs to operate and maintain other necessary infrastructure; its costs to comply with applicable Federal and State laws; and its corporate overhead and other internal corporate costs. All of those factors may (and do) vary from company to company and from state to state. Unlike an arm's-length sale of coal, where the sale price directly and accurately reflects the value of the coal, the sale price of electricity is determined by many factors in addition to the price of coal.

Moreover, electricity is generated, transmitted, and distributed through regional grids where the electricity is maintained for delivery at specified voltages and frequencies. The regional grids function as pools that are fed by electricity generated from a variety of different resources, including natural gas, solar, wind, geothermal, and coal. The electricity is then sold in wholesale markets in a variety of ways, including, but not limited to, firm and non-firm sales, long-term and short-term sales, interruptible sales, and daily spot-market sales. The markets also include ancillary services, such as spinning and non-spinning reserves, voltage and frequency control, and load following. Each of these sales commands a different price. We have concluded at this time that the approach taken in the 2017 Valuation Rule establishes an unreasonable requirement for the lessee or ONRR to dissect these services and sales, and trace those sales back to coal produced from the lease, particularly because electricity generated from coal is pooled with electricity generated from other resources before it is sold. In short, it would be very challenging for lessees to calculate and pay royalties based on the sale price of electricity and

similarly challenging for ONRR to verify the accuracy of those calculations.

Finally, the 2017 Valuation Rule failed to address the increasingly common situation in which gross proceeds accrue to a lessee's affiliate. The rule stated that lessees value their Federal and Indian coal production on "the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions." (Emphasis added.) As used in that regulation, the word "you" referred to the lessee, which the rule defined as "any person to whom the United States, an Indian Tribe, and/or individual mineral owner issues a lease, and any person who has been assigned all or part of record title, operating rights, or an obligation to make royalty or other payments by the lease." For Federal and Indian coal, the definition of lessee included "an operator, payor, or other person with no lease interest who makes royalty payments on the lessee's behalf." The rule was silent, however, on how to value coal when the gross proceeds accrued to a lessee's affiliate. This oversight would have undermined ONRR's mission and responsibility to collect and verify royalties, which would have had a direct impact on revenue accruing to ONRR's State and Tribal partners.

## 2. Definition of "Coal Cooperative"

The 2017 Valuation Rule defined "coal cooperatives" to capture the arm's-length value of coal in those limited circumstances in which unaffiliated companies cooperate to market and exchange coal for mutual economic advantage. But the term was defective in several respects. At bottom, the definition was overly broad and ambiguous and created too much confusion to be effective or enforceable. And because the definition was too broad, it asked lessees to perform an unreasonably difficult task, that is, to value coal based on the sale price received by a third-party company that was neither affiliated, nor in a contractual relationship, with the lessee.

More specifically, the 2017 Valuation Rule did not define what entities are included in a coal cooperative, nor did the rule adequately identify what type of behavior, conduct, or economic relationships constitute a coal cooperative. Thus, the rule did not provide lessees with meaningful direction to enable them to determine whether they are part of a coal cooperative and, if so, what other entities may also be part of that cooperative. Indeed, the definition was so broad that it would have captured

almost any entity engaged in the production, marketing, and transportation of coal, regardless of how far removed that entity was from the lessee. Consequently, it would have been unreasonable for either ONRR or the lessee to determine where the coal cooperative began and where it ended. By extension, it would have been unreasonable for either ONRR or the lessee to determine when the first arm's-length sale occurred. As a result, lessees could not have valued their coal, and ONRR (or States or Tribes, acting under authority by ONRR) could not have verified that value. That inadvertent and unfortunate confusion was, of course, directly contrary to ONRR's intent when it promulgated the rule.

What is more, the definition would have required lessees to perform an unreasonably difficult task. For example, a federal lessee in a coal cooperative could sell its coal to an unaffiliated third party that is also in the cooperative. But because the parties are part of the same cooperative, we would not have considered that sale to be an arm's-length transaction. The third party then could have transferred the coal to an affiliate, who could have sold the coal at arm's-length. Under those circumstances, the rule would have required the lessee to value its coal based on the sales price received by the third-party's affiliate, a company that was neither affiliated, nor in a contractual relationship, with the lessee. Under this scenario, the lessee probably could not have obtained the sales price information it needed to determine the royalty-bearing value of its coal.

Last, the definition of coal cooperative was unnecessary because it attempted to solve a problem that was already addressed by the prior (and soon-to-be-reinstated) regulations. In the example, under the prior regulations ONRR would still obtain fair market value for the coal because the lessee and third party lack opposing economic interests, and we therefore would apply the provision in the regulations for valuing coal in non-arm's-length transactions. Under that provision, depending on the circumstances, ONRR could still value the coal based on the first arm's-length transaction under the fourth benchmark in 30 CFR 1206.257(c)(2) (Federal coal) or 1206.456(c)(2) (Indian coal).

## 3. Default Provision

Statutes and lease terms grant the Secretary considerable authority and discretion to establish the reasonable value of Federal and Indian minerals. By promulgating the so-called default provision, ONRR was attempting to offer greater clarity, consistency, and

predictability by defining when, where, and how the Secretary would exercise his discretionary authority to use an alternative methodology to value minerals. We attempted to explain that we would invoke the default provision only in specific and limited situations when we could not determine whether a lessee had properly paid royalties under the regulations. Those situations include when a lessee fails to provide documents during an audit, when a lessee engages in misconduct, when a lessee breaches its duty to market, or any other situation that compromises our ability to reasonably determine the fair market value of the oil, gas, or coal. But because we described those circumstances so broadly, without limits or meaningful guidance, the rule created more confusion and uncertainty than it resolved.

We also failed to appreciate the numerous administrative challenges posed by the default provision. For example, the 2017 Valuation Rule did not identify who within ONRR has the authority to invoke the default provision or whether that decision must be approved or may be appealed. The rule defined “misconduct” so broadly that lessees, ONRR, and ONRR’s State and Tribal partners were left without any meaningful guidance on what type of misconduct triggered the default provision. At the same time, the rule was silent on whether ONRR must make a formal finding of misconduct before the default provision is invoked, who has the authority make such a finding, and whether such a finding is subject to review. We believe that those ambiguities would have led to very inconsistent applications of the rule.

The 2017 Valuation Rule also did not address whether the default provision was a tool of last resort or a vehicle to collect and verify royalties more efficiently. For example, the rule offered no guidance on what would happen if ONRR invoked the default provision to value production because the lessee failed to provide documents necessary to value the production, and the lessee later produces those documents. Nor did the rule fully explain how the default provision interacted with ONRR’s civil penalty regulations. For example, if a lessee knowingly or willfully fails to provide documents during an audit, the rule was silent on

whether ONRR would issue a civil penalty for failing to permit an audit, or whether ONRR would complete the audit by valuing the production under the default provision, or both. These challenges, and many others, made the default provision confusing to lessees and would have made it difficult, for ONRR to implement and enforce.

Finally, with or without the default provision, ONRR already has the authority to establish the value of Federal and Indian minerals when we cannot determine whether a lessee properly paid royalties. While the default provision was a well-intended attempt to provide certainty and predictability by clarifying and codifying that authority, we now recognize that the default provision created more confusion, uncertainty, and apprehension than it resolved.

#### 4. Requirement That Arm’s-Length Contracts Be in Writing and Signed by All Parties

The 2017 Valuation Rule required both lessees and their affiliates to reduce all contracts, contract revisions, or amendments to writing and have them signed by all of the parties. The rule further stated that where the lessee did not have in place a written contract signed by all of the parties, ONRR could use the default provision to value the oil, gas, or coal at issue.

Based on the comments we received, we have reconsidered our position on this requirement. We now agree with the majority of commenters that this provision of the rule is unnecessary, overly burdensome, and potentially defective. First, this provision overlooked the fact that unwritten agreements or unsigned, written agreements may be binding, legally enforceable contracts. Second, this provision contradicted the definition of “contract” in the rule itself, which defined “contract” as “any oral or written agreement . . . that is enforceable by law” and which did not require the contract to be signed by the parties. Third, the preamble stated that ONRR could discount or ignore an arm’s-length contract if the contract were not in writing and signed by all of the parties, which ran counter to ONRR’s long-held position that arm’s-length sales are the best indicator of market value. Fourth, the rule required the

lessees’ affiliates to have all of their contracts, contract revisions, and amendments reduced to writing and signed by all of the parties, despite the fact that the affiliates are not Federal or Indian lessees and the rule was not purporting to regulate them. And fifth, the rule burdened lessees and their affiliates with an unnecessary and potentially costly obligation to conform contracts to meet ONRR’s specifications, which could increase the cost of production and delay the delivery of mineral resources.

#### 5. Valuation Guidance and Determinations

The 2017 Valuation Rule required Federal oil and gas and Indian coal lessees to request valuation determinations from ONRR that, because of an oversight in the rule, we would no longer have the regulatory authority to issue. The prior regulations authorized ONRR to issue a binding valuation determination in response to a request from an oil, gas, or coal lessee. The 2017 Valuation Rule, however, inadvertently stripped ONRR of that authority or, at the very least, was unclear as to whether ONRR could continue to exercise that authority.

More specifically, sections 1206.108 (Federal oil), 1206.148 (Federal gas), 1206.258 (Federal coal), and 1206.458 (Indian coal) all provided that a lessee could request a valuation determination from ONRR. The rule then provided that ONRR could do one of three things in response to the request: (1) Request that the Assistant Secretary for Policy Management and Budget issue a determination; (2) decide that ONRR will issue non-binding guidance; or (3) notify the lessee that ONRR will not provide a determination or guidance. The rule was silent, however, on whether ONRR could issue a valuation determination in response to a request. Thus, under the 2017 Valuation Rule ONRR arguably had no authority to continue to issue valuation determinations.

This was particularly problematic because several sections in the 2017 Valuation Rule required lessees to request valuation determinations from ONRR, and several other provisions required ONRR to issue such determinations. Those references appear in the following sections:

Federal gas	Federal oil	Federal coal	Indian coal
1206.141(e) 1206.142(f) 1206.153(d) 1206.160(b)(2)	1206.111(d)	1206.252(b)(2) 1206.261(c) 1206.268(c)	1206.452(b)(2) 1206.461(c) 1206.468(c)

Federal gas	Federal oil	Federal coal	Indian coal
1206.160(c)			

At bottom, this oversight means that lessees cannot comply with the 2017 Valuation Rule and ONRR cannot enforce it, which undermines the purpose and intent of the rule. Even if ONRR could issue valuation determinations in the absence of a regulation, these sections fail to specify whether ONRR's determinations are binding on ONRR or the lessee, and if so, whether the lessee may appeal the determination. Other provisions of the regulations cross-reference the terms "valuation determinations" and "determinations" without defining those terms or stating whether those terms are synonymous or distinct. In addition, section 1206.458, which applies to Indian coal, incorrectly provides that the Assistant Secretary for Policy, Management and Budget will issue a valuation determination regarding Indian coal. But only the Assistant Secretary for Indian Affairs has the authority to issue a valuation determination for questions concerning Indian lands. All in all, the numerous defects and the lack of consistency in the regulations governing valuation determinations undermined the purpose and intent of the rule and would have created confusion and inefficiencies and imposed additional burdens on both ONRR and the regulated community.

6. Flared Gas Valuation

Under the 2017 Valuation Rule, lessees who are required to pay royalty on flared gas would have been required to value the vented and flared gas using an index price for the area if one is available. If an index price were not available, then the lessee would have been required to propose a method to ONRR under the default provision. In those circumstances, we expected that the proposed method would value the vented and flared gas based on the arm's-length sale price the lessee received for other gas sold from the same lease. ONRR now recognizes that this regulation would have imposed an unnecessary and potentially costly administrative burden on certain lessees. It would also have run counter to ONRR's belief and position that arm's-length transactions are the best indicator of value.

For example, there is no viable index price in North Dakota. Thus, lessees in North Dakota would have been required to propose a method to ONRR under the default provision. For lessees that also

sell gas produced from the same lease at arm's-length, we assumed that the lessee would propose to value its vented and flared gas on the price it received in the arm's-length sale. Thus, those lessees would have reported one volume, on one line, pursuant to a single valuation method.

Lessees in the San Juan Basin in New Mexico, however, would have been held to a different standard. Because there is a viable index price in the San Juan Basin, lessees there would be required to value their gas using the index price. That is true even if the lessee were selling the same gas from the same lease at arm's length to third-party buyers. Under those circumstances, the lessee would be required to report two separate volumes, on two separate lines, using two separate valuation methods. This inconsistency, and the additional administrative burden it would impose on certain lessees, was not our intent when we promulgated the rule.

In sum, the 2017 Valuation Rule would have imposed an unnecessary and potentially costly administrative burden on certain lessees. At the same time, the rule would run counter to ONRR's long-held belief and position that prices under arm's-length contracts are the best measure of value.

7. Changes in Administration and Energy Policy

The nation elected a new President in November 2016, and the new administration took office on January 20, 2017. Through various public announcements the new administration quickly signaled that it would adopt and follow a national energy policy different than that of its predecessor, one that emphasized and prioritized the reduction of Federal regulatory burdens on industry. On March 28, 2017, President Donald J. Trump issued E.O. 13783—Promoting Energy Independence and Economic Growth (Executive Order) (82 FR 16093, Mar. 31, 2017). The Executive Order begins by stating broadly that "[i]t is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." The Executive Order then continues, "Accordingly, it is the policy of the United States that executive

departments and agencies (agencies) immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." To that end, the Executive Order directs the heads of all agencies to "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources." The Executive Order defines "burden" to mean "to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources."

Pursuant to the Executive Order, ONRR included the 2017 Valuation Rule in its review of regulations that potentially burden the development or use of domestically produced energy resources. As a result of that review, we concluded that the rule, as a whole, would unduly burden or unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the production, utilization, or delivery of Federal oil or gas or Federal or Indian coal. For example, because we realized that valuing coal based on the arm's-length sale of electricity is a very challenging task, we concluded that Federal and Indian coal lessees would incur unnecessary and unwarranted costs in trying to comply with those provisions in the 2017 Valuation Rule. Likewise, because we had realized that the definition of "coal cooperative" in the rule was too broad and ambiguous to comply with or enforce, we concluded that lessees in cooperatives would incur unnecessary and unwarranted costs in an effort to determine the royalty-bearing value of their coal. These defects alone would have resulted in significant costs that would have served as a financial disincentive to producing coal from Federal or Indian lands.

In sum, a number of provisions of the 2017 Valuation Rule would have unnecessarily obstructed, delayed,

curtailed, or otherwise imposed significant costs on the production, utilization, or delivery of Federal oil and gas and Federal and Indian coal. The repeal of the 2017 Valuation Rule therefore is consistent with the policy announced in the Executive Order and the direction that the Executive Order provides to executive agencies. The Department takes seriously its responsibility to ensure that taxpayers receive the full value from Federal mineral leases, which is why ONRR intends to continue to consider future changes and develop a new rulemaking after further analysis and consultations with our key stakeholders and the general public.

## II. Comments on Proposed Rules

On April 4, 2017, ONRR published a Notice of Proposed Rulemaking (NPRM) to invite public comment on the possible repeal of the 2017 Valuation Rule. 82 FR 16323. During the 30-day public comment period, we received more than one thousand pages of written comments from over 2,342 commenters. We received comments from industry, industry trade groups, Members of Congress, State governors and agencies, local municipalities, Tribes, local businesses, public interest groups, and individual commenters. The majority of comments—both those opposing and those supporting repeal—addressed the Federal and Indian coal valuation provisions in the 2017 Valuation Rule.

Comments opposing repeal of the 2017 Valuation Rule generally argued that repealing the 2017 Valuation Rule would result in undervaluing our nation's oil, gas, and coal resources; would result in a waste of government resources; and would violate certain provisions in the APA.

Comments supporting repeal of the 2017 Valuation Rule generally faulted the following elements of the rule: (a) The method that lessees must use to calculate value on coal sold under non-arm's-length contracts; (b) ONRR's definition of "contract" and "misconduct"; (c) the default provision; (d) changes to transportation and processing allowances; (e) the option to value Federal gas sold under non-arm's-length transactions based on index prices; and (f) percentage-of-proceeds contracts.

### A. General Comments

*Public Comment:* Many commenters who work in the coal industry or live in coal-mining-dependent communities, including a tribe, maintained that the 2017 Valuation Rule went too far. They argued that the 2017 Valuation Rule

imposed unwarranted valuation methods, which, they contended, hinder transparency and create complex and subjective oil, gas, and coal valuations. They claimed that the 2017 Valuation Rule would cause economic harm to the oil, gas, and coal industries, including the loss of jobs.

ONRR also received a few comments advocating that oil, gas, and coal production should stop and that the minerals should "stay in the ground."

*ONRR Response:* We agree that the 2017 Valuation Rule's process for using the sale price of electricity to value coal would be too complex to comply with, implement, or enforce. We also agree that other aspects of the 2017 Valuation Rule, including the default provision and the definition of coal cooperative, are too broad to be implemented effectively, which could make reporting and paying royalties more burdensome and less predictable and transparent.

Although we appreciate the comments regarding keeping fossil fuels in the ground and the socioeconomic impact of the 2017 Valuation Rule on communities that rely on coal production, both issues are beyond the scope of this rulemaking.

*Public Comment:* An industry trade group commented that complexities in the 2017 Valuation Rule would make it difficult for small businesses to comply. The commenter also claimed that smaller companies would not be able to take deductions, resulting in a higher royalty rate.

*ONRR Response:* For the reasons stated previously, we agree that implementing the rule would increase the costs of compliance and unnecessarily burden the production of Federal and Indian mineral resources. We also agree that those increased compliance costs could disproportionately impact smaller companies that have fewer resources to comply.

*Public Comment:* We received comments from two States asserting that repealing the rule would unfairly reduce the royalties that the States receive under the 2017 Valuation Rule.

Conversely, we received a comment from another State asserting that not repealing the rule would result in decreased production that would adversely affect its royalty share.

*ONRR Response:* Based on our economic analysis, we recognize that repealing the 2017 Valuation Rule will result in a decrease in royalties (between 0.8 percent and 1.0 percent) to our State partners compared to what they would receive if ONRR implemented and enforced the rule. ONRR will continue to assess options

for updating our valuation regulations and expects to, in the near future, propose new rules that could offset, in whole or in part, the decrease in royalties shared with State partners in future years compared to what would otherwise result from the repeal of the 2017 Valuation Rule. As discussed previously, the rule has a number of defects that make certain provisions challenging to comply with, implement, or enforce. ONRR's attempt to implement or enforce the rule as written would have compromised our ability to collect and account for mineral royalty revenues, which in turn may have affected distributions to other royalty beneficiaries. It would also have imposed an additional financial and administrative burden on our State and Tribal partners, who audit and verify royalty payments.

We also agree with the State commenter that implementing the 2017 Valuation Rule could result in some decreased production, particularly for coal, because the burden of complying with certain provisions of the rule would serve as a disincentive to production. This too would result in decreased royalty distributions to our State and Tribal partners. All told, we believe that the modest economic gains that might result from implementing the rule are far outweighed by the potentially significant burden on industry, ONRR, and our State and Tribal partners from implementing and enforcing a rule with significant defects.

*Public Comment:* Industry trade groups claimed that the 2017 Valuation Rule was unnecessarily complex, which would increase the costs of complying with the regulation. The groups maintained that the complexity and costs would discourage industry from entering into Federal or Indian leases.

*ONRR Response:* ONRR agrees that several unforeseen defects in the 2017 Valuation Rule have the potential to significantly increase the cost and administrative burden of compliance, which could create a disincentive to entering into, and producing oil, gas, and coal from, Federal or Indian leases.

*Public Comment:* We received comments encouraging collaboration with our stakeholders in any future rulemaking. Many industry commenters encouraged working through the RPC to advise ONRR on valuation policies.

*ONRR Response:* As discussed previously, the Secretary has recently re-established the RPC to collaborate with our stakeholders in any future rulemaking. The RPC will provide a forum for engaging with the public on many of the same issues we attempted to address in the 2017 Valuation Rule.

We look forward to working with our stakeholders in the RPC on a future rulemaking.

#### *B. Fair Return to Government*

*Public Comment:* Many commenters and comments disagreed about the need either to revise or to repeal the 2017 Valuation Rule. Some public interest groups and some members of the public asserted that ONRR's regulations have undervalued royalties for many years and that the changes made in the rule would ensure that royalties are based on fair market value. Industry trade groups and other members of the public maintained that the rule would result in values that inflate the value of the resources.

*ONRR Response:* We disagree that repealing the rule will prevent the government from receiving a fair market value for its mineral resources. The prior (and soon-to-be-reinstated) regulations have been in place for more than twenty years and serve as a reasonable, reliable, and consistent method for valuing Federal and Indian minerals for royalty purposes. This is evidenced by the fact that when we promulgated and published the final 2017 Valuation Rule, we estimated that it would generate less than 1 percent in additional royalties. 81 FR 43359. Moreover, as we discussed in proposing the 2017 Valuation Rule, we were attempting to make "proactive and innovative changes" to the rules "to increase the effectiveness and efficiency of the rules." We believe today, as we always have, that the prior (and soon-to-be-reinstated) regulations provide a fair market return for Federal and Indian minerals. That said, we will continue to look for opportunities to improve our regulations, including opportunities to improve the return to taxpayers and Indian mineral owners and to streamline processes for both ONRR and industry.

*Public Comment:* A public interest group maintained that our regulations should use a market value based on the value of the resource where it is ultimately consumed. The comment asserted that ONRR does not collect royalties at the market and that we should more aggressively pursue a value at the market instead of a value at the lease.

*ONRR Response:* While we appreciate the comment, whether ONRR should use a market value based on the value of the resource where it is ultimately consumed is outside the scope of this rulemaking.

#### *C. Administrative Procedure Act (APA)*

One member of Congress, two State officials, and several public interest groups asserted that ONRR failed to comply with certain requirements in the APA.

*Public Comment:* Some commenters stated that ONRR's decision to postpone the effectiveness of the 2017 Valuation Rule indicates ONRR's intent to repeal the rule, without regard to any comments received in a rulemaking process, in violation of APA rulemaking requirements.

*ONRR Response:* The 2017 Valuation Rule was effective on January 1, 2017. On February 27, 2017, for the reasons discussed in the preamble to this rule, including the filing of three separate petitions challenging the rule in the United States District Court for the District of Wyoming, ONRR postponed the effectiveness of the rule, pending judicial review. 82 FR 11823. ONRR did not decide to repeal the 2017 Valuation Rule, however, until after we had reviewed and considered of all comments that we received in response to the proposed rule of repeal, which we published in the **Federal Register** on April 4, 2017. 82 FR 16323.

*Public Comment:* We also received comments contending that ONRR did not provide a reasoned basis to repeal the rule.

*ONRR Response:* We are providing a reasoned basis to repeal the rule in the preamble to this rule. Before we proposed to repeal the 2017 Valuation Rule, we identified several defective provisions in the rule that would have made these provisions unnecessarily complicated and burdensome to comply with, implement, or enforce. When we published the proposed rule of repeal on April 4, 2017, we identified some of those defects and specifically invited public comment on them as well as on other aspects of the 2017 Valuation Rule.

*Public Comment:* Public interest groups and some individuals claimed that the 30-day comment period in the NPRM is unreasonable and violates the APA. The commenters asserted that ONRR went to great effort to promulgate the 2017 Valuation Rule and was now proposing to repeal it with only a 30-day comment period.

*ONRR Response:* Under the APA's rulemaking procedures, agencies must publish a notice of proposed rulemaking in the **Federal Register**; allow interested persons an opportunity to comment on the proposed rule; and, after considering those comments, publish the final rule. The APA requires an opportunity to submit "written data, views, or

arguments," yet there is no required minimum comment period under the APA. See 5 U.S.C. 553(c). Through this rulemaking we are complying with the requirements set forth in the APA. We provided a reasonable amount of time to allow interested parties a sufficient opportunity to consider the repeal and its supporting analysis and to provide meaningful comments.

*Public Comment:* One commenter asserted that ONRR must analyze the record compiled to issue the rule and provide a reasoned explanation for the repeal. According to the commenter, ONRR has not cited any new scientific or technical information in support of repeal.

*ONRR Response:* The comment is not clear on whether it refers to the record for the 2017 Valuation Rule or the record for the repeal of the 2017 Valuation Rule. Regardless, we provided the purpose and justification for both rules and responded to comments that we received during both rulemakings. Specifically, we analyzed the record compiled during the 2017 Valuation Rule rulemaking. 81 FR 43338. In the preamble and responses to comments for this final rule, ONRR also analyzed the record compiled for the proposed repeal. We have determined to repeal the 2017 Valuation Rule for the reasons stated herein.

#### *D. Government Efficiency*

*Public Comment:* One member of Congress and a public interest group asserted that repealing the rule amounts to wasting government resources because ONRR is abandoning the work that it performed while promulgating the 2017 Valuation Rule. These commenters also argued that if there are problems with the rule, ONRR should address those problems separately and not necessarily abandon the rule in its entirety.

*ONRR Response:* We disagree that repealing the rule is a waste of government resources. As noted previously, the 2017 Valuation Rule has several defects that make certain provisions unnecessarily complicated and burdensome to comply with, implement, or enforce. We have concluded that those defects are significant enough that implementing the rule would compromise our mission to collect and account for mineral royalty revenues for Federal oil and gas and Federal and Indian coal. The cost of implementing the rule and subsequently trying to fix the defects in one or more separate rulemakings would far exceed the cost of repealing and replacing the rule.



We also disagree that ONRR is abandoning the work that it previously performed. As noted previously, the Secretary is reestablishing the RPC to increase stakeholder engagement on many of the same issues the 2017 Valuation Rule attempted to address. We hope and expect that this new round of public engagement will lead to the development of a new valuation rule. The work that ONRR performed while promulgating the 2017 Valuation Rule, as well as the stakeholder comments during that rulemaking, will no doubt serve as valuable resources for the RPC as it fulfills its charge to advise ONRR on current and emerging issues related to the determination of fair market value and the collection of royalties from resources on Federal and Indian lands.

#### E. Federal and Indian Coal Valuation

For coal not sold under arm's-length contracts, the 2017 Valuation Rule removed the ability for lessees to use the benchmarks found in the prior (and soon-to-be-reinstated) regulations. Instead, under the 2017 Valuation Rule lessees had to value their coal on the first arm's-length sale of the coal. In cases where that first arm's-length sale was for the sale of electricity, lessees had to use the prices that they received for electricity to "net back" to the value of the coal at the lease.

##### 1. Valuing Coal Based on Benchmarks

*Public Comment:* ONRR received numerous comments from industry, government officials, industry trade groups, public interest groups, and the general public regarding how lessees should value Federal and Indian coal not sold at arm's length.

Some commenters maintained that the prior rule's non-arm's-length valuation benchmarks fail to capture the true value of coal that lessees sell in non-arm's-length transactions. The commenters posited that the benchmarks do not allow ONRR to determine royalty value based on a coal lessee's affiliate's subsequent arm's-length sale, including overseas sales, resulting in the coal industries taking advantage of a "loophole." These commenters maintained that the most effective method to determine the value of Federal and Indian coal not sold under arm's-length contracts is to use the first arm's-length sale of coal sold by the lessee's affiliate.

ONRR also received comments from industry, government officials, industry trade groups, and the general public that supported repealing the rule because they found the old benchmarks to be time-tested and robust. These commenters maintained that the 2017

Valuation Rule's method to determine value for royalty purposes when Federal and Indian lessees do not sell their coal at arm's-length was difficult to implement and did not establish an appropriate value, for royalty purposes, of Federal or Indian coal at the mine. One commenter asserted that the rule amounted to an unlawful royalty on the value of services that an affiliate provides to the lessee.

*ONRR Response:* We believe that arm's-length transactions generally are the best indicators of market value because they provide a consistent and accurate measure of value. But we do not agree that the benchmarks in the prior (and soon-to-be-reinstated) regulations create a "loophole" that permits coal lessees to shirk their royalty obligations. Indeed, ONRR has used the benchmarks to order additional royalties due based on an affiliate's arm's-length sale, including in those circumstances in which the coal is sold by the affiliate in the international market. While we recognize that the benchmarks are sometimes difficult to apply, we also recognize that benchmarks are a proven and time-tested method for determining the fair value of Federal and Indian coal that the lessee does not sell at arm's-length.

##### 2. Valuing Coal Based on "Net Back" From Electric Sales

*Public Comment:* Numerous coal companies and a coal industry trade group expressed a range of concerns about using electric sales to value coal sold in non-arm's-length situations without competing economic interests. In particular, these commenters highlighted extraordinary complexities in electric markets and the electric producers' resource portfolios. They objected to valuing coal by way of electricity, which the commenters asserted is a separate commodity subject to its own unique market factors and forces and regulatory requirements, and argued that geothermal regulations were inappropriate as a means for determining transmission and production allowances. Overall, industry commenters argued that the 2017 Valuation Rule's effort to value coal through arm's-length sales of electricity was overly burdensome if not functionally impossible. A number of comments from the general public also asserted that valuing coal as electricity would make electricity more expensive because the increased royalty burden would be passed on to the consumer.

*ONRR Response:* ONRR has carefully considered these comments and, as discussed in the preamble to this rule, has concluded and agrees that the 2017

Valuation Rule's process for "netting back" to the value of coal from arm's-length electrical sales is an unnecessarily complicated and burdensome task to perform and does not necessarily result in an accurate valuation of the coal.

##### 3. Other Issues Related to Valuing Coal

*Public Comment:* Two companies, one State government representative, three industry trade groups, and one member of the public supporting the repeal observed that the 2017 Valuation Rule handles coal lessees differently than oil and gas lessees and claimed that this treatment is discriminatory. They pointed out that, like coal, gas can be used to generate electricity, but that, unlike coal, ONRR does not require Federal or Indian gas lessees to value their gas production based on electricity sales "netted back" to the lease.

*ONRR Response:* We did not intend to discriminate against coal by valuing the coal based on electricity sales. Coal, oil, and gas are all different commodities, subject to different market factors and forces and regulatory requirements. In our experience, the first arm's-length sale of much Federal or Indian coal is as electricity. That is rarely the case for Federal or Indian oil and gas.

*Public Comment:* One company suggested that the costs to comply with the 2017 Valuation Rule's non arm's-length coal valuation provisions would offset any increase in royalty that ONRR would receive. The company further claimed that ONRR's own analysis shows that the royalties received from these provisions would be minimal if not negative.

*ONRR Response:* We agree that the 2017 Valuation Rule's requirement to value coal based on electric sales is overly burdensome and would result in substantial compliance costs.

#### F. Definitions

##### 1. Misconduct

The 2017 Valuation Rule included a new definition of "misconduct" to use in conjunction with the default provision.

*Public Comment:* One member of the public took issue with the 2017 Valuation Rule's definition of the term "misconduct." The commenter maintained that the term has derogatory implications that could affect a lessee's reputation. The commenter noted that the definition added tension between ONRR and the industry that it regulates.

*ONRR Response:* We defined "misconduct" to clarify when ONRR would use its discretion to determine the value of production under the

default provision. We now believe the definition is too ambiguous because it provides almost no guidance as to what type of conduct qualifies as misconduct. At the same time, the rule is silent on whether ONRR must make a formal finding of misconduct before the default provision is invoked, who has the authority make such a finding, and whether such a finding is reviewable on appeal. Taken together, these ambiguities could lead to inconsistent applications of the rule, which would undermine the purpose and intent of the rule. While we cannot surmise how a finding of misconduct would impact a lessee's reputation, we do agree with the commenter that the ambiguity of the definition perpetuated (and perhaps aggravated) the tension and apprehension that we were attempting to rectify.

## 2. Coal Cooperative

The 2017 Valuation Rule added a new definition of the term "coal cooperative" that included formal or informal organizations of companies or other entities sharing in a common interest to produce and market coal or coal-based products, the latter generally being electricity.

*Public Comment:* One company asserted that, by determining in advance that transactions between coal cooperatives are non-arm's-length, ONRR failed to take into account its longstanding criteria for determining whether entities are affiliated. The commenter further contended that ONRR has not provided any evidence to support that coal cooperatives are engaging in non-arm's-length transactions. The company concludes that this is arbitrary, capricious, and contrary to law.

*ONRR Response:* For the reasons discussed in the preamble to this rule, we agree that the definition of coal cooperatives in the 2017 Valuation Rule is overly broad and ambiguous and would create too much confusion to be effective or enforceable. We also agree that the definition is unnecessary because ONRR can evaluate such transactions on a case-by-case basis under the prior (and soon-to-be-reinstated) regulations.

## G. Default Provision

The 2017 Valuation Rule included the so-called default provision, which allowed ONRR great discretion to value a lessee's oil, gas, and coal production in circumstances in which we could not determine whether a lessee properly paid royalties under the regulations. We explained that such circumstances included, but were not limited to, the

lessee's failure to provide documents, the lessee's misconduct, the lessee's breach of the duty to market, or any other situation that significantly compromises the Secretary's ability to reasonably determine the correct value using other measures of value.

*Public Comment:* Companies and industry trade groups overwhelmingly opposed the default provision. Many general public commenters also opposed it. The commenters asserted that the default provision gave ONRR "overly broad" discretion to determine the value of production. An oil and gas industry trade group asserted that the default provision allowed ONRR to "second guess" lessees' reporting and payment in subsequent years, potentially causing lessees to incur late payment interest and penalties. A State official raised concerns that the default provision could have a chilling effect on coal production from Federal and Indian lands.

Public interest groups and other members of the general public approved of the default provision, at least in principle. These commenters asserted that eliminating the default provision would hinder ONRR's ability to ensure a fair value of Federal and Indian mineral resources, specifically for coal. One public interest group stated that the default provision simply codified the Secretary's authority to determine royalty value and clarified when and how ONRR anticipated using that authority.

*ONRR Response:* The comments alone demonstrate how the default provision created far more confusion, uncertainty, and apprehension than we intended or anticipated. Under FOGDRA, as amended, the Secretary indisputably has the authority and discretion to determine the reasonable value of Federal and Indian minerals. By promulgating the default provision, we attempted to offer greater clarity, consistency, and predictability by defining when, where, and how ONRR would value production in those circumstances in which we could not determine whether a lessee properly paid royalties under the regulations. We drafted the rule broadly to encompass every scenario in which ONRR would be forced to invoke the default provision. We realize now that in doing so, we provided little in the way of meaningful guidance on how and when ONRR would invoke its authority. Moreover, because the rule was so broad, it created the perception that ONRR would look past the valuation regulations and value production under the default provision regardless of whether the lessee properly reported

and paid royalties under our regulations. This widespread confusion defeated the very purpose and intent of including a default provision in the rule.

Also, we disagree with those commenters who claimed that eliminating the default provision would hinder ONRR's ability to ensure a fair value of Federal and Indian mineral resources. Indeed, with or without the default provision, ONRR has the authority to establish the value of Federal and Indian minerals when we cannot determine whether a lessee properly paid royalties under the regulations. ONRR exercised this authority under our prior regulations, and we will continue to exercise that authority now that those regulations will be reinstated. Typically we use this authority in limited circumstances to establish a reasonable value of production using market-based transaction data, which has always been the basis for our royalty valuation rules. Therefore, the repeal of the default provision will have the same small and speculative royalty impact as its implementation.

## H. Allowances

In the 2017 Valuation Rule ONRR eliminated the regulation allowing us to approve transportation allowances in excess of 50 percent of the value of a lessee's oil production. The rule also eliminated lessees' ability to net transportation costs in their gross proceeds calculations ("transportation factors"). The 2017 Valuation Rule also eliminated both our ability to grant extraordinary processing allowances and to approve requests for lessees to exceed the 66⅔ percent limitation on processing allowances.

*Public Comment:* Coal companies and coal industry trade groups asserted that coal transportation allowances were poorly defined. They also objected to the 2017 Valuation Rule's requirement that they use the geothermal allowance regulations to "net back" to the value of coal where the first arm's-length sale is electricity. Oil and gas industry unanimously opposed the rule's cap on transportation and processing allowances of 50 percent and 66⅔ percent, respectively.

Public interest groups generally opposed repealing the allowance provisions in the 2017 Valuation Rule. Some commenters suggested that allowance caps create more transparency and are easier to enforce. One public interest group advocated for eliminating all allowances, suggesting that they are a form of subsidy. Another public interest group reiterated its view

that coal transportation and washing allowances should, like oil and gas, be limited to 50 percent and 66⅔ percent, respectively. A member of the general public asserted that ONRR should give standard deductions for transportation and coal washing to reduce administrative burden and to ensure a fair return to taxpayers.

**ONRR Response:** We appreciate the variety of responses, but whether ONRR should eliminate all transportation allowances or establish a standard allowance are questions that are outside the scope of this rulemaking. The United States shares in certain expenses that occur downstream or away from the lease, including costs associated with transportation, gas processing, and coal washing, because the United States benefits from lessees selling their production at a market instead of at the lease.

We agree that, in practice, the requirement that coal lessees use the geothermal allowance regulations to “net back” to the value of coal where the first arm’s-length sale is electricity is unnecessarily complicated and burdensome. While we disagree that the provisions in the 2017 Valuation Rule that would have capped oil and gas transportation allowances were arbitrary and capricious, we recognize that each cap would impose additional costs on some operators.

**Public Comment:** ONRR received comments from industry trade groups stating that the 2017 Valuation Rule arbitrarily reversed a longstanding deep-water-gathering policy that permitted lessees to take transportation allowances for moving oil and gas production on the OCS.

In contrast, a public interest group asserted the deep-water-gathering policy allowed improper deductions under ONRR’s regulatory scheme prior to the 2017 Valuation Rule. The commenter maintained that repealing the 2017 Valuation Rule removes language that ensures appropriate deep-water transportation allowances.

**ONRR Response:** By repealing the 2017 Valuation Rule and reinstating the prior regulations, ONRR’s longstanding deep-water-gathering policy will remain in effect, and ONRR will continue to implement it to the extent that it is consistent with the prior regulations. Nonetheless, ONRR believes that the deep-water-gathering policy is a matter that is appropriate to revisit and reconsider. ONRR will be further considering this matter, including through consultations as part of the RPC process.

### *I. Index-Based Gas Valuation Option*

The 2017 Valuation Rule added an index-price valuation method that lessees who do not sell their gas under an arm’s-length sale could have elected to use in lieu of valuing their gas on their first arm’s-length sale. ONRR based the method on publicly-available index prices, less a specified deduction to account for processing and transportation costs.

**Public Comment:** An industry trade group and a member of the public cited the shortcomings in the index-based gas valuation option as one reason for repealing the 2017 Valuation Rule. While they supported the use of index-based valuation in concept, they argued that the index-based valuation option in the rule is unreasonable and, at times, arbitrary for the following reasons: (1) ONRR did not provide the option to arm’s-length lessees; (2) the index option could result in a price so high that it would disincentivize lessees from using it; (3) the adjustments for transportation and processing were too low; and (4) ONRR did not provide any standards for when and why it might change the adjustments.

**ONRR Response:** We agree with the commenters that this is an area requiring further analysis. Given the mutual interest in exploring index-based valuation options, we believe the newly re-commissioned RPC will provide a valuable forum to engage our stakeholders in a meaningful way on this topic.

### *J. Percentage of Proceeds Contracts*

Lessees sometimes sell their gas under arm’s-length length percentage-of-proceeds (POP) contracts for a price that is based on a specific percentage of the proceeds that the purchaser receives after processing the gas. The 2017 Valuation Rule required lessees with POP contracts to report and pay royalties as processed gas. This rule of repeal allows lessees to report and value POP contract sales as unprocessed gas.

**Public Comment:** An industry trade group maintained that lessees would find it difficult to value gas sold under arm’s-length POP contracts because they lack access to information from the midstream processors and/or purchasers.

**ONRR Response:** Our experience is that the value lessees receive under a POP contract is usually net of certain costs incurred to place the gas into marketable condition. The 2017 Valuation Rule did not change the lessee’s obligation to ensure that it is not deducting costs to place gas in marketable condition at no cost to the

Federal government; repealing the rule likewise does not change that obligation. Nonetheless, we believe that how to value gas sold under arm’s-length POP contracts is an appropriate topic for the RPC, and we look forward to engaging with members of the public and industry stakeholders to explore different options for reporting POP contracts.

### *K. Requirement of Written, Signed Contracts*

Although the 2017 Valuation Rule defined “contract” to include legally enforceable oral agreements, the rule itself required a lessee or its affiliate to have all of its contracts, contract revisions or amendments in writing and signed by all of the parties. If the lessee did not have a written contract, signed by all of the parties, then ONRR could use the default provision to determine value.

**Public Comment:** Several commenters disagreed with the 2017 Valuation Rule’s requirement that all contracts for the sale, transportation, processing, or washing of oil, gas, or coal be in writing and signed by all parties to the contract. These commenters maintained that such a restriction ignores that unwritten and unsigned contracts are legally enforceable.

**ONRR Response:** We adopted the requirement that all contracts be in writing and signed by all parties to enhance our ability to verify the accuracy of royalty reports and payments. For the reasons stated in the preamble to this rule, we reconsidered our position and now agree that this provision is unnecessary, overly burdensome, and potentially defective. The prior (and soon-to-be-reinstated) regulations do not require all contracts to be in writing and signed by all parties. But, under 30 CFR 1207.5, we will continue to require lessees to place in written form and maintain copies of all sales contracts and to maintain copies of other contracts and agreements for accounting or auditing purposes.

## **III. Procedural Matters**

### *A. Summary Cost and Royalty Impact Data*

The economic impact analysis that we prepared in the 2017 Valuation Rule used 2010 royalty data. These economic impacts reflected market conditions—commodity price, volumes, etc.—that existed in 2010. In evaluating the economic impacts of repealing the rule, we used more recent royalty data. Using data from 2015 versus 2010 provides an estimate that is more in line with current market projections of future

commodity prices. The market for these resources changed between 2010 and 2015, with the value of the resources generally decreasing. Not surprisingly, our updated analysis shows a somewhat smaller decrease in royalty payments compared to the analysis that accompanies the 2017 Valuation Rule. Overall, our estimates for the previous rule, using 2010 data, projected costs to industry of \$74.78 million per year (with roughly corresponding benefits to the Treasury and States); this rule, using 2015 data, the projected costs to industry from the 2017 Valuation Rule total \$67.4 million per year; thus repeal of the rule results in \$67.4 million in benefits to industry (with roughly corresponding benefits to the Treasury and States).

We estimated the costs and benefits that this rule will have on all potentially affected groups: Industry, the Federal government, Indian lessors, and State and local governments. This repeal has cost impacts that will result in decreased royalty collections. The net impact of these provisions is an estimated annual decrease in royalty collections of between \$60.1 million and \$74.8 million. This represents between 0.8 percent and 1.0 percent of the total Federal oil, gas, and coal royalties that we collected in 2015. Although the 2017 Valuation Rule was stayed before the first reporting and payments were due, some lessees had already implemented changes in their related systems and reporting procedures. Therefore, some lessees

may incur additional costs from implementing this rule because some lessees may have to undo the system changes that they put in place in anticipation of first reporting under the 2017 Valuation Rule on February 28, 2017. We are unable to quantify that cost at this time.

Unless otherwise indicated, the numbers in the following tables are rounded to three significant digits.

#### 1. Industry

The table below lists ONRR's itemized low, mid-range, and high estimates of the costs and benefits that industry would incur in the first year. Industry would receive these benefits in the same amount each year thereafter.

#### SUMMARY OF ROYALTY IMPACTS TO INDUSTRY

Rule provision	Low	Mid	High
Gas—restore benchmarks:			
Remove affiliate resale .....	\$0	\$1,360,000	\$2,710,000
Remove index .....	10,600,000	10,600,000	10,600,000
NGLs—restore benchmarks:			
Remove affiliate resale .....	0	754,000	1,510,000
Remove index .....	(2,210,000)	(2,210,000)	(2,210,000)
Gas transportation 50 percent limitation exceptions reinstated .....	87,000	87,000	87,000
Processing allowance 66⅔ percent limitation exceptions reinstated .....	42,700	42,700	42,700
POP contracts processing allowance exceptions of 66⅔ percent reinstated .....	9,470,000	9,470,000	9,470,000
Extraordinary processing allowance reinstated .....	14,200,000	14,200,000	14,200,000
Deep-water-gathering reinstated .....	23,900,000	28,100,000	32,300,000
Oil transportation 50 percent limitation exceptions reinstated .....	0	0	0
Oil and gas line losses allowance reinstated .....	3,140,000	3,140,000	3,140,000
BBB bond rate change removed .....	5,740,000	5,740,000	5,740,000
Coal—non-arm's-length netback reinstated .....	(1,030,000)	0	1,030,000
Removing index option administrative costs .....	(303,000)	(303,000)	(303,000)
Removing deep-water-gathering administrative costs .....	(3,560,000)	(3,560,000)	(3,560,000)
Total .....	60,100,000	67,400,000	74,800,000

**Note:** totals from this table and others in this analysis may not add due to rounding.

**Benefit—Reinstatement of the Valuation Benchmarks for Non-Arm's-Length Dispositions of Federal Unprocessed Gas, Residue Gas, and Coalbed Methane**

To perform this economic analysis, we first extracted royalty data that we collected on residue gas, unprocessed gas, and coalbed methane (product codes 03, 04, and 39, respectively) for calendar year 2015. We did not include 2016 in any of our data sets because lessees are still adjusting their reports for that year and the reported data is still going through ONRR's edits.

We then extracted gas royalty data for non-arm's-length transactions reported with the sales type code NARM. We also extracted gas royalty data for sales type code POOL because royalty reporters may also use this code to report certain

non-arm's-length transactions. Based on our experience with auditing transactions that use sales type code POOL, only a relatively small portion of transactions are non-arm's-length. Therefore, we used 10 percent of the POOL volumes in our economic analysis of the volumes of gas sold at non-arm's length.

Based on our experience auditing production sold under non-arm's-length contracts, we find that industry would incur a royalty decrease between \$0.00 and \$0.05 per MMBtu under our proposal to use the benchmarks instead of the affiliate's first arm's-length resale to value gas production for royalty purposes. We address the royalty impact of the index-based option below.

We generated a range of potential royalty decreases by assuming no change in royalties for the low estimate, \$0.025 per MMBtu for the mid-range estimate, and \$0.05 per MMBtu for the high estimate. We then multiplied the NARM volume and 10 percent of the POOL volume reported to ONRR in 2015 by the potential royalty decrease.

The results below are an estimated benefit to industry due to an annual royalty decrease of between zero and approximately \$5.4 million. We reduced this estimate by one-half and assumed the mid-point of \$0.025 totaling \$1.36 million. This assumes that 50 percent of the lessees selling production under non-arm's-length arrangements would have chosen this option under the 2017 Valuation Rule.

	2015 MMBtu volume (non-rounded)	Royalty decrease (\$)		
		Low (\$0.00)	Mid (\$0.025)	High (\$0.05)
NARM volume .....	97,869,053	\$0	\$2,446,726	\$4,893,453
10% POOL volume .....	10,614,876	0	265,372	530,744
Total .....	108,483,929	0	2,712,098	5,424,196
50% of lessees choose this option .....	.....	0	1,360,000	2,710,000

Benefit—Termination of the Index-Based Option To Value Non-Arm's-Length Sales of Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

To estimate the royalty impact of removing the index-based option, we calculated a monthly weighted average price net of transportation using NARM and 10 percent of the POOL gas royalty data from seven major geographic areas with active index prices: The Green River Basin, San Juan Basin, Piceance and Uinta Basins, Powder River Basin, Wind River Basin, Permian Basin, and Offshore Gulf of Mexico (GOM). These areas account for approximately 95 percent of all Federal gas produced. To calculate the estimated impact, we performed the following steps: First, identified the *Platts Inside FERC* highest reported monthly price for the index price applicable to each area—

Northwest Pipeline Rockies for Green River, El Paso San Juan for San Juan, Northwest Pipeline Rockies for Piceance and Uinta, Colorado Interstate Gas for Powder River and Wind River, El Paso Permian for Permian, and Henry Hub for GOM. Second, we subtracted the transportation deduction that we specified in the 2017 Valuation Rule from the highest index price that we identified in the first step. Third, we subtracted the average monthly net royalty price reported to us for unprocessed gas from the highest index price for the same month that we calculated in the second step. Fourth, we then multiplied the royalty volume by the monthly difference that we calculated in the third step to calculate a monthly royalty difference for each region. And fifth, we totaled the difference that we calculated in the fourth step for the regions.

In 2015, the estimated royalties due using the index-based option was greater than the reported royalties in every month during our analysis.

We estimate the benefit to industry due to this change to be a decrease in royalty payments of approximately \$10.6 million annually. This estimate represents an average decrease of approximately 9.8 percent, or \$0.026 per MMBtu, based on an annual royalty volume of 154,104,793 MMBtu (for NARM and 10 percent POOL reported sales type codes). This would have been the first time that we offered this option; therefore, we did not know how many payors would choose it. We reduced this estimate by one-half, assuming that 50 percent of lessees with non-arm's-length sales would have chosen this option.

	GOM gas	Other gas	Total
2015 royalties .....	\$72,216,537	\$143,618,273	\$215,834,810
Royalty under index option .....	79,359,207	157,684,860	237,044,067
Difference .....	7,142,670	14,066,587	21,209,257
Per unit change (\$/MMBtu) .....	0.030	0.025	0.026
% Change .....	9.9%	9.8%	9.8%
50% of lessees choose this option .....	.....	.....	10,600,000

Benefit—Reinstatement of the Valuation Benchmarks for Non-Arm's-Length Dispositions of Federal NGLs

Like the valuation changes that we discussed previously, for Federal unprocessed, residue, and coalbed methane gas valuation, this rule will value processed Federal NGLs under the prior valuation benchmarks rather than either (1) tracing the first arm's-length sale or (2) using the index-based option discussed previously. Lessees will no longer have the option to value royalties using an index price value derived from

an NGL commercial price bulletin less a theoretical processing allowance that included theoretical transportation and fractionation of the NGLs. We again used the 2015 NARM and POOL NGL data that lessees reported to ONRR for this analysis.

We performed the same analysis for valuation using the first arm's-length sale for Federal unprocessed, residue, and coalbed methane gas, as we discussed. We identified the non-arm's-length volumes that would qualify for this option (for NARM and 10 percent POOL reported sales type codes) and

estimated a cents-per-gallon royalty decrease. Based on our experience, we estimate that the NGL resale margin, similar to gas, would range from zero to \$0.03 per gallon. Thus, our estimated royalty decrease is zero for the low, \$0.015 per gallon for the mid-range, and \$0.03 per gallon for the high range. The results below show a mid-range decrease of \$754,000 in royalty obligations using these assumptions, and, again, we reduced them by one-half under the assumption that 50 percent of lessees would have chosen this option.

	2015 gallons (rounded to the nearest gallon)	Royalty decrease (\$)		
		Low (\$0.00 cents)	Mid (\$0.15)	High (\$0.03)
NARM volume .....	66,911,096	\$0	\$1,003,666	\$2,007,333

	2015 gallons (rounded to the nearest gallon)	Royalty decrease (\$)		
		Low (\$0.00 cents)	Mid (\$0.15)	High (\$0.03)
10% of POOL volume .....	33,675,717	0	505,136	1,010,272
Total .....	100,586,813	0	1,508,802	3,017,604
50% of lessees choose this option .....	.....	0	754,000	1,510,000

#### Cost—Termination of the Index-Based Option To Value Non-Arm's-Length Dispositions of Federal NGLs

Like the Federal unprocessed, residue, and coalbed methane gas changes that we discussed, lessees will no longer have the option to pay royalties on Federal NGLs production using an index-based value, less a

theoretical processing allowance that includes transportation and fractionation. We used the same 2015 NARM and POOL transaction data for NGLs for this analysis. We were unable to compare NGL prices reported on the form ONRR-2014 to those in commercial price bulletins because the prices that lessees report on the form ONRR-2014 are a single rolled-up price

for all NGLs and the bulletins price each NGL product (such as ethane and propane) separately. Therefore, we calculated a weighted price, or basket price, from the published prices based on typical NGL product volumes, as well as based our analysis on the royalty changes that result from removal of the theoretical processing allowance provided under this option.

%	GOM NGLs	Other NGLs	Total
2015 royalties .....	\$22,292,763	\$9,884,982	\$32,177,746
Royalty under index option .....	\$20,165,669	\$7,585,605	\$27,751,273
Difference .....	(\$2,127,095)	(\$2,299,378)	(\$4,426,472)
Per-unit change (\$/gal) .....	(\$0.004)	(\$0.008)	(\$0.006)
Percent change .....	– 9.5%	– 23.3%	– 13.8%
50% of lessees choose this option .....	.....	.....	(\$2,210,000)

#### Cost—Termination of the Index-Based Option To Value Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, Coalbed Methane, and NGLs

ONRR expects that industry will incur additional administrative costs from losing the option to use the index-based option to value non-arm's-length dispositions of Federal unprocessed gas, residue gas, coalbed methane, and NGLs. Lessees will have to calculate the value of their production using the valuation benchmarks, increasing the time that it takes to calculate the correct price. Lessees will also have to calculate

their specific transportation rate for gas, and processing allowance for NGLs, rather than using the ONRR-specified theoretical values.

For the 50 percent of lessees that we estimated would use this option, we estimate that eliminating the index-based option will increase the time burden per line reported by 50 percent to 1.5 minutes for lines that industry electronically submits and 3.5 minutes for lines that they manually submit. In 2015, ONRR received approximately 16 percent more lines than from the data used in the prior rule. We used tables

from the Bureau of Labor Statistics (BLS) (<https://www.bls.gov/oes/current/oes132011.htm#nat>), which we updated to use current BLS data to estimate the hourly cost for industry accountants in a metropolitan area. We added a multiplier of 1.4 for industry benefits. The industry labor cost factor for accountants will be approximately \$53.42 per hour = \$38.16 [mean hourly wage] × 1.4 [benefits cost factor]. Using a labor cost factor of \$53.42 per hour, we estimate that the annual administrative cost to industry will be approximately \$303,000.

	Time burden per line reported (min)	Estimated lines reported using index option (50%)	Annual burden hours
Electronic reporting (99%) .....	1.5	221,780	5,544
Manual reporting (1%) .....	3.5	2,240	131
Industry labor cost/hour .....	.....	.....	\$53.42
Total cost to industry .....	.....	.....	\$303,000

#### Benefit—Allow Transportation Allowances in Excess of 50 Percent of the Value of Federal Gas

Prior to the 2017 Valuation Rule, the Federal gas valuation regulations limited lessees' transportation allowances to 50 percent of the value of the gas unless they requested and

received approval to exceed that limit. The 2017 Valuation Rule eliminated the lessees' ability to exceed that limit. This rule reinstates the lessees' ability to request and receive approval to exceed the 50 percent limitation. To estimate the impacts associated with this change, we first identified all calendar year 2015

reported gas transportation allowances rates that exceeded the 50-percent limit. We then adjusted those allowances down to the 50-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated benefit to industry of \$87,000.

### Benefit—Allow Transportation Allowances in Excess of 50 Percent of the Value of Federal Oil

Prior to the 2017 Valuation Rule, the Federal oil valuation regulations limited lessees' transportation allowances to 50 percent of the value of the oil unless they requested and received approval to exceed that limit. The 2017 Valuation Rule eliminated the lessees' ability to exceed that limit. This rule reinstates the lessees' ability to request and receive approval to exceed the 50-percent limitation. To estimate the costs associated with this change, we searched for calendar year 2015-reported oil transportation allowance rates that exceeded the 50-percent limit. We did not find any lines for oil transportation that exceeded the 50 percent, so there will be no impact to industry. But companies may exceed the 50-percent limit in the future.

### Benefit—Allow Processing Allowances in Excess of 66⅔ Percent of the Value of the NGLs for Federal Gas

Prior to the 2017 Valuation Rule, the Federal gas valuation regulations limited lessees' processing allowances to 66⅔ percent of the value of the NGLs unless they requested and received approval to exceed that limit. The 2017 Valuation Rule eliminated lessees' ability to exceed that limit. This rule reinstates the lessees' ability to request and receive approval to exceed the 66⅔-percent limitation. To estimate the cost to industry associated with this change, we first identified all calendar year 2015-reported processing allowances greater than 66⅔ percent. We then adjusted those allowances down to the

66⅔-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated benefit to industry of \$42,700.

### Benefit—Arm's-Length POP Contracts Not Subject to the 66⅔ Percent Processing Allowance Limit for Federal Gas

In this rule and the rule in effect prior to the 2017 Valuation Rule, lessees with POP contracts paid royalties based on their gross proceeds as long as they paid a minimum value equal to 100 percent of the value of the residue gas. Under the 2017 Valuation Rule, we do not allow lessees with POP contracts to deduct more than the 66⅔ percent of the value of the NGLs. This rule reinstates the previous regulation's provision allowing lessees with POP contracts to pay royalties based on their gross proceeds, as long as those gross proceeds are, at a minimum, equal to 100 percent of the value of the residue gas. For example, a lessee with a 70-percent POP contract receives 70 percent of the value of the residue gas and 70 percent of the value of the NGLs. The 30 percent of each product that the lessee gives up to the processing plant in the past could not, when combined, exceed an equivalent value of 100 percent of the NGLs' value. By repealing the 2017 Valuation Rule, the combined value of each product that the lessee gives up to the processing plant could, again, potentially exceed two-thirds of the NGLs' value.

Lessees report POP contracts to ONRR using sales type codes APOP for arm's-length POP contracts and NPOP for non-arm's-length POP contracts. Because

lessees report arm's-length POP contract sales as unprocessed gas, there are no reported processing allowances for us to analyze, and we cannot determine the breakout between residue gas and NGLs. Lessees do report residue gas and NGLs separately for non-arm's-length POP contracts. However, these reported volumes constitute only 0.07 percent of all the natural gas royalty volumes reported to ONRR. We deemed the non-arm's-length POP volume to be too low to adequately assess the impact of this provision on both arm's-length POP and non-arm's-length POP contracts.

Therefore, we examined all reported calendar year 2015 onshore residue gas and NGLs royalty data and assumed that it was processed and that lessees paid royalties as if they sold the residue gas and NGLs under a POP contract. We restricted our analysis to residue gas and NGL volumes produced onshore because we are not aware of any offshore POP contracts. We first totaled the residue gas and NGLs' royalty value for calendar year 2015 for all onshore royalties. We then assumed that these royalties were subject to a 70-percent POP contract. Based on our experience, a 70/30 split is typical for many POP contracts. We calculated 30 percent of both the value of residue gas and the NGLs to approximate a theoretical 30-percent processing deduction. We then compared the 30-percent total of residue gas and NGLs values to 66⅔ percent of the NGLs value (the maximum allowance under the 2017 Valuation Rule). The table below summarizes these calculations, which we rounded to the nearest dollar:

	2015 royalty value prior to allowances	70%	30%
Residue gas .....	\$494,401,673	\$346,081,171	\$148,320,502
NGLs .....	132,618,537	92,832,976	39,785,561
Total .....	627,020,209	438,914,147	188,106,063
66.67% limit .....	88,412,358	(132,618,537 × ⅔)	
Difference .....	99,693,705	(\$188,106,063 – \$88,412,357)	

Our analysis shows that the theoretical processing deduction for 30 percent of the value of residue gas and NGLs (\$188 million) under our assumed onshore POP contract allowance would exceed the 66⅔ cap (\$88 million) under this rule.

In our analysis for the 2017 Valuation Rule, the theoretical deduction did not exceed the allowance cap, and we estimated that this change would result

in no impact. The 2015 data, however, did show that the theoretical deduction exceeded the allowance cap, and there will be an economic impact by repealing the 2017 Valuation Rule. This is primarily due to the changing price relationship between gas and NGLs.

We estimated that the benefit to industry would be \$9.47 million by taking the royalty value that exceeds the POP contract allowance (\$100 million)

and dividing by the total of non-POP volume (1,582,143,530 MMBtu) to calculate a per-MMBtu rate of \$0.06. We then applied the \$0.06 rate to the POP contract total volume of 157,764,948 MMBtu to get the estimated increase of \$9.47 million. For the sake of this analysis, we assumed that all processing costs incurred were allowable.



2015 MMBtu volume .....	1,582,143,530	
Rate/MMBtu over limit .....	\$0.06	(\$99,693,705/1,582,143,530)
POP MMBtu volume .....	157,764,948	
Total impact to industry .....	\$9,470,000	(\$.06 × 157,764,948)

Benefit— Reinstatement of Policy Allowing Transportation Allowances for Deep-Water-Gathering Systems for Federal Oil and Gas

The deep-water-gathering policy discussed previously allows companies to deduct certain expenses for subsea gathering from their royalty payments, even though those costs do not meet ONRR’s definition of transportation. This rule would result in ONRR continuing to apply the policy to the extent that it is consistent with the prior (and soon-to-be-reinstated) regulations. Lessees would therefore be allowed to claim additional allowances, which would decrease their royalties due. To analyze the impact to industry of reinstating this policy, we used data from BSEE’s ArcGIS TIMS (*Technical Information Management System*) database to estimate that 113 subsea pipeline segments serving 140 leases currently qualify for an allowance under the policy. We assumed all segments were the same—in other words, we did not take into account the size, length, or type of pipeline. For our analysis we also considered only pipeline segments that were in active status and leases in producing status. To determine a range (shown in the tables below as low, mid, and high estimates) for the impact for industry, ONRR estimated a 15 percent error rate in our identification of the 113 eligible pipeline segments, resulting in a range of 96 to 130 eligible pipeline segments.

Historical ONRR audit data was available for 13 subsea gathering segments, which served 15 leases covering time periods from 1999 through 2010. We used this data to determine an average initial amount of capital investment in pipeline segments. We used the initial capital investment amount to calculate depreciation and a return on undepreciated capital investment (ROI) for the eligible pipeline segments. We calculated depreciation using a straight-line depreciation schedule based on a 20-year useful life of the pipeline. We calculated ROI using 1.0 times the average BBB Bond rate for January 2012, which was the most recent full month of data at the time we performed this analysis. We based the calculations for depreciation and ROI on the first year a pipeline was in service. From the same audit data, we calculated an average annual operating and maintenance (O&M) cost. We increased the O&M cost by 12 percent to account for overhead expenses. Based on experience and audit data, we assumed that 12 percent is a reasonable increase for overhead. We then decreased the total annual O&M cost per pipeline segment by nine percent because an average of nine percent of offshore wellhead oil and gas production is water, which is not royalty bearing. Finally, we used an average royalty rate of 14 percent, which is the volume weighted average royalty rate for all non-Section 6 leases in the Gulf of Mexico. Based on the these

calculations, the average annual allowance per pipeline segment is approximately \$226,664. This represents the estimated amount per pipeline segment ONRR would no longer allow lessees to take as a transportation allowance based on our rescission of the Deep Water Policy in this proposed rulemaking. The total cost to industry would be the \$226,664 annual allowance per pipeline segment that we would allow under this proposed rulemaking times the number of eligible segments. To calculate a range for this total, we multiplied the average annual allowance by the low (96), mid (113), and high (130) number of eligible segments. The low, mid, and high annual allowance estimates we would allow are \$21.8 million, \$25.6 million, and \$29.5 million, respectively. Of the currently eligible leases, 56 out of 140, or about 40 percent, qualified for deep water royalty relief under the policy. However, due to varying lease terms, royalty relief programs, price thresholds, volume thresholds, litigation, and other factors, ONRR estimated that only one-half of the 56 leases eligible for royalty relief (20 percent of the 56) actually received royalty relief. Therefore, we decreased the low, mid, and high estimated annual benefit to industry by 20 percent. The table below shows the estimated royalty impact of this section of the proposed rule based on the allowances we will allow under this rule.

	Low	Mid	High
Estimated Royalty Impact .....	\$23,900,000	\$28,100,000	\$32,300,000

Cost—Reinstatement of Policy Allowing Transportation Allowances for Deep-Water- Gathering Systems for Federal Oil and Gas

We estimate the restoration of transportation allowances for deep-water-gathering systems would eliminate the industry administrative benefit under the 2017 Valuation Rule as lessees would have to perform this

calculation. We assume that the cost to perform this calculation is significant because in our experience industry has often hired outside consultants to calculate their subsea transportation allowances. Using this information, we estimate each company with leases eligible for transportation allowances for deep water gathering systems would allocate one full-time FTE annually to perform this calculation, whether they

use consultants or perform the calculation in-house. We used the Bureau of Labor Statistics to estimate the hourly cost for industry accountants in a metropolitan area (\$38.16 mean hourly wage) with a multiplier of 1.4 for industry benefits to equal approximately \$53.42 per hour (\$38.16 × 1.4). Using this labor cost per hour, we estimate the annual administrative cost to industry would be approximately:

	Annual burden hours per company	Industry labor cost/hour	Companies reporting eligible leases	Estimated cost to industry
Deep Water Gathering .....	2,080	\$53.42	32	\$3,560,000

#### Benefit—Reinstating Extraordinary Processing Cost Allowances for Federal Gas

As we discussed previously, we are reinstating the provision in our regulations that allows lessees to request an extraordinary processing cost allowance and to allow any extraordinary processing cost allowances that we previously granted. We have granted two such approvals in the past, so we know the lease universe that is claiming this allowance and were able to retrieve the processing allowance data that lessees deducted from the value of residue gas produced from the leases. We then calculated the annual total processing allowance that lessees have claimed for 2012 through 2015 for the leases at issue. We then averaged the yearly totals for those four years to estimate an annual benefit to industry of \$14.2 million in decreased royalties.

#### Benefit—Increasing the Rate of Return Used To Calculate Non-Arm's-Length Transportation Allowances From 1 to 1.3 Times the Standard and Poor's BBB Bond for Federal Oil and Gas

For Federal oil transportation, we do not maintain or request data identifying whether transportation allowances are arm's length or non-arm's length. However, in our experience, lessees transport a significant portion of Gulf of Mexico (GOM) oil through their own pipelines. In addition, many onshore transportation allowances include costs of trucking and rail and, most likely, this change would not impact those. Therefore, to calculate the costs associated with this change, we assumed that 50 percent of the GOM transportation allowances are non-arm's length and that ten percent of transportation allowances everywhere else (onshore and offshore other than the GOM) are non-arm's length. We also assumed that, over the life of the pipeline, allowance rates are made up of

one-third rate of return on undepreciated capital investment, one-third depreciation expenses, and one-third operation, maintenance, and overhead expenses.

In 2015, the total oil transportation allowances that Federal lessees deducted were approximately \$100 million from the GOM and \$12.5 million from everywhere else. Based on these totals and our assumptions regarding the makeup of the allowance components, the portion of the non-arm's-length allowances attributable to the rate of return will be approximately \$16,600,000 for the GOM ( $\$100,000,000 \times \frac{1}{3} \times 50\%$ ) and \$416,000 ( $\$12,500,000 \times \frac{1}{3} \times 10\%$ ) for the rest of the country. Based on these assumptions, industry will receive an increase in yearly oil transportation allowance deductions of approximately \$3,920,000 ( $\$17,000,000 \times (1.3 - 1.0)/1.3$ ). That is, we estimate that the net benefit to industry for oil transportation allowances as a result of this change will be an approximately \$3,920,000 in decreased royalties due.

Like Federal oil, we do not maintain or request information on whether Federal gas transportation allowances are arm's-length or non-arm's length. However, unlike Federal oil, in our experience, it is not common for GOM gas to be transported through lessee-owned pipelines. Therefore, we assumed that only 10 percent of all gas transportation allowances are non-arm's length and made no distinction between the GOM and everywhere else. All other assumptions for natural gas are the same as those that we made for oil.

In 2015, the total gas transportation allowances that Federal lessees deducted were approximately \$238 million. Based on that total and our assumptions regarding the makeup of the allowance components, the portion of the non-arm's-length allowances attributable to the rate of return will be approximately \$7.93 million ( $\$238,000,000 \times \frac{1}{3} \times 10\%$ ). Therefore,

industry will see an increase in yearly gas transportation allowance deductions of approximately \$1.82 million ( $\$7.93 \text{ million} \times (1.3 - 1.0)/1.3$ ). That is, the net decreased cost to industry for gas transportation allowances will be approximately \$1,820,000.

The combined impact to industry for this change will be \$5,740,000 in decreased royalties due.

#### No Change—Disallow a Rate of Return on Reasonable Salvage Value for Federal Oil, Gas, and Coal

In the 2017 Valuation Rule, ONRR estimated that this provision would have no impact to industry. ONRR likewise estimates that the repeal has no impact.

#### Benefit—Allow Line Loss as a Component of Non-Arm's-Length Oil and Gas Transportation

This rule also reinstates the regulatory provision allowing lessees to deduct the costs of pipeline losses, both actual and theoretical, when calculating non-arm's-length transportation allowances. For this analysis, we assumed that pipeline losses are 0.2 percent of the volume transported through the pipeline, based on a survey of pipeline tariff. This 0.2 percent of the volume transported would also equate to 0.2 percent of the value of the Federal royalty volume of oil and gas production transported.

For Federal oil produced in calendar year 2015, the Federal royalty value subject to transportation allowances was \$2,746,256,148 in the GOM and \$1,039,271,142 everywhere else. Using our previous assumption that 50 percent of GOM and 10 percent of everywhere else's transportation allowances are non-arm's length, we estimated that the value of the line loss will be \$2.96 million, as we detailed in the table below. Therefore, the annual benefit to industry will be approximately \$2.96 million.

#### OIL LINE LOSS ROYALTY IMPACT

		Line loss %	Royalty decrease
50% of GOM royalty value .....	\$1,373,128,209	0.2	\$2,750,000
10% of everywhere else royalty value .....	103,927,114	0.2	208,000

## OIL LINE LOSS ROYALTY IMPACT—Continued

		Line loss %	Royalty decrease
Total .....			2,960,000

For Federal gas produced in calendar year 2015, the Federal gas royalty value subject to transportation allowances was

\$888,676,828. Using our previous assumption that 10 percent of Federal gas transportation allowances are non-

arm's length, we estimated that the value of the line loss and annual benefit to industry would be \$178,000.

## GAS LINE LOSS ROYALTY IMPACT

		Line loss %	Royalty decrease
10% of royalty value .....	\$88,867,683	0.2	\$178,000

The total estimated royalty decrease for both oil and gas due to this change will be \$3.14 million [\$2,960,000 (oil) plus \$178,000 (gas) = \$3,140,000].

## Benefit—Depreciating Oil Pipeline Assets Only Once

Under the non-arm's-length transportation allowance section of this rule and the rule in effect prior to the 2017 Valuation Rule, for Federal oil, if an oil pipeline is sold, the purchasing company might use the purchase price to establish a new depreciation schedule, provided that the purchasing company is a royalty payor claiming a non-arm's-length transportation allowance. In theory, this change results in additional royalty savings for companies. However, based on our experience monitoring the oil markets, we find that the sale of oil pipeline assets is rare. We are also not aware of any planned future sales of oil pipelines that this rule change will impact. Therefore, although there will be a benefit to industry under this rule, we cannot quantify the cost at this time.

No Change—Eliminating the Use of the First Arm's-Length Sale to Value Non-Arm's-Length Sales of Federal Coal and Sales of Federal Coal Between Parties That Lack Opposing Economic Interest—"Coal Cooperatives" in the 2017 Valuation Rule

In the 2017 Valuation Rule, ONRR did not estimate any impacts to industry for the change in regulations for this provision. This repeal will reinstate the valuation regulations as they were prior to the 2017 Valuation Rule's publication. Therefore, ONRR does not estimate any impact to industry at this time.

No Change—Eliminating the Use of Arm's-Length Electricity Sales to Value Non-Arm's-Length Dispositions of Federal Coal and Dispositions of Federal Coal Parties That Lack Opposing Economic Interest—"Coal Cooperatives" in the 2017 Valuation Rule

In the 2017 Valuation Rule, ONRR did not estimate any impacts to industry for the change in regulations for this provision. This repeal will reinstate the valuation regulations as they were prior to the 2017 Valuation Rule's publication. Therefore, ONRR does not estimate any impact to industry at this time.

No Change—Eliminating the Default Provision to Value Non-Arm's-Length Sales of Federal Coal in Lieu of Sales of Electricity

For these situations, valuation of Federal coal will be determined under the non-arm's-length benchmarks after this repeal of the 2017 Valuation Rule. Because the default provision establishes a valuation method that approximates the market value of the coal very similar to the benchmarks, we estimate that the royalty effect of this rule on lessees of Federal coal will be nominal.

No Change—Using the First Arm's-Length Sale to Value Non-Arm's-Length Sales of Indian Coal

In the 2017 Valuation Rule, ONRR did not estimate any impacts to industry for the change in regulations for this provision. This repeal will reinstate the valuation regulations as they were prior to the 2017 Valuation Rule's publication. Therefore, we do not estimate any impact to industry at this time.

No Change—Using Sales of Electricity to Value Non-Arm's-Length Sales of Indian Coal

In the 2017 Valuation Rule, ONRR did not estimate any impacts to industry for the change in regulations for this provision. This repeal will reinstate the valuation regulations as they were prior to the 2017 Valuation Rule's publication. Therefore, we do not estimate any impact to industry at this time.

No Change—Using First Arm's-Length Sale to Value Sales of Indian Coal Between Coal Cooperative Members

In the 2017 Valuation Rule, ONRR did not estimate any impacts to industry for the change in regulations for this provision. This repeal will reinstate the valuation regulations as they were prior to the 2017 Valuation Rule's publication. Therefore, we do not estimate any impact to industry at this time.

No Change—Elimination of the Default Provision to Value Federal Oil, Gas, and Coal and Indian Coal

In the 2017 Valuation Rule, we anticipated that we would have used the default provision only in specific cases where conventional valuation procedures have not worked to establish a value for royalty purposes. We also stated that assigning a royalty impact figure to any of the instances where we would have used the default provisions was speculative because (1) each instance would have been case-specific, (2) we could not anticipate when we would have used the option, and (3) we could not anticipate the value that we would have required companies to pay. Additionally, we estimated that the royalty impact would have been relatively small because the default provision would always have established a reasonable value of

production using market-based transaction data, which has always been the basis for our royalty valuation rules. Therefore, removal of the default provision will have a similarly small and speculative royalty difference.

## 2. State and Local Governments

We estimate that the States and local governments that this rule impacts will incur a decrease in royalty receipts. The details of this impact are outlined below.

States and local governments receiving revenues for offshore Outer Continental Shelf Lands Act Section 8(g) leases will continue to receive royalties as under the regulations preceding the 2017 Valuation Rule, as will States receiving revenues from onshore Federal lands. Based on the ratio of Federal revenues disbursed to States and local governments for section 8(g) leases and the onshore States we detail in the table below, ONRR assumed the same proportion of revenue decreases for each proposal that will impact those State revenues for most of the provisions.

## ROYALTY DISTRIBUTIONS BY LEASE TYPE

	On-shore %	Offshore %	8(g) %
Federal .....	50	100	73
State .....	50	0	0
Section 8(g) .....	0	0	27

Some provisions of this rule affect Federal, State, and local government revenues, while others, such as reinstating extraordinary processing cost allowances, affect only onshore States' and Federal revenues. The table summarizing the State and local government royalty decreases that we provide in section 5 details these differences.

## 3. Indian Lessors

ONRR estimates that the changes to the coal regulations that apply to Indian lessors will have no impact on their royalties.

## 4. Federal Government

The impact to the Federal government, like the States and local governments, will be a net decrease in

royalties as a result of these changes. The royalty decrease incurred by the Federal government will be the difference between the total royalty decrease to industry and the royalty decrease affecting the States and local governments. The net yearly impact on the Federal government will be approximately \$55.8 million, which we detail in section (5) below.

## 5. Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Lessors, and the Federal Government

In the table below, the negative values in the industry column represent their estimated royalty collection decrease for Federal, State, and local governments, while the positive values in the other columns represent the increase in royalty savings for industry. Please note that the estimated impacts to Federal, State, and local governments do not include the administrative savings provisions of the economic analysis discussed above. Those provisions are only realized by industry. For the purposes of this summary table, we used the midpoint estimates for these impacts.

Rule Provision	Industry	Federal	State	State 8(g)
Gas—restore benchmarks:				
Remove affiliate Resale .....	\$1,360,000	(\$865,000)	(\$483,000)	(\$11,600)
Remove index .....	\$10,600,000	(\$6,750,000)	(\$3,760,000)	(\$90,600)
NGLs—restore benchmarks:				
Remove affiliate Resale .....	\$754,000	(\$529,000)	(\$220,000)	(\$4,830)
Remove index .....	(\$2,210,000)	\$1,550,000	\$646,000	\$14,200
Gas transportation 50% limitation exceptions reinstated .....	\$87,000	(\$55,400)	(\$30,900)	(\$744)
Processing allowance 66⅔% limitation exceptions reinstated .....	\$42,700	(\$29,900)	(\$12,500)	(\$274)
POP contracts' processing allowance exceptions of 66⅔% limitation reinstated .....	\$9,470,000	(\$6,640,000)	(\$2,770,000)	(\$60,700)
Extraordinary processing allowance reinstated .....	\$14,200,000	(\$7,100,000)	(\$7,100,000)	\$0
Deep-water-gathering reinstated .....	\$28,100,000	(\$28,100,000)	\$0	\$0
Oil transportation 50% limitation exceptions reinstated .....	\$0	\$0	\$0	\$0
Oil and gas line losses allowance reinstated .....	\$3,140,000	(\$2,560,000)	(\$562,000)	(\$17,200)
BBB bond rate change removed .....	\$5,740,000	(\$4,680,000)	(\$1,030,000)	(\$31,500)
Coal provisions .....	\$0	\$0	\$0	\$0
Total .....	\$71,300,000	(\$55,800,000)	(\$15,300,000)	(\$200,000)

**Note:** totals from this table and others in this analysis may not add due to rounding.

## B. Regulatory Planning and Review (Executive Orders 12866 and 13563 and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs Dated January 30, 2017)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant because it may materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the

rights and obligations of recipients thereof.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. This Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant,

feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

This final rule is considered a deregulatory action under E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs* (82 FR 9339, Feb. 3, 2017). Although there are some costs to industry associated with this rule, the

rule still results in an overall savings to industry. Details on the estimated savings and costs associated with the rule can be found in the rule's economic analysis.

### C. Regulatory Flexibility Act

The Department of the Interior (Department) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See the 2017 Valuation Rule, Procedural Matters, item 1, starting at 81 FR 43359, and item 3, starting at 81 FR 43367.

This rule will affect only lessees under Federal oil and gas leases and Federal and Indian coal leases.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), see item 1 above for the analysis.

This rule will affect lessees under Federal oil and gas leases and Federal and Indian coal leases. Federal and Indian mineral lessees are, generally, companies classified under the North American Industry Classification System (NAICS), as follows:

- Code 211111, which includes companies that extract crude petroleum and natural gas
- Code 212111, which includes companies that extract surface coal
- Code 212112, which includes companies that extract underground coal

For these NAICS code classifications, a small company is one with fewer than 500 employees. Approximately 1,920 different companies submit royalty and production reports from Federal oil and gas leases and Federal and Indian coal leases to us each month. Of these, approximately 65 companies are large businesses under the U.S. Small Business Administration definition because they have more than 500 employees. The Department estimates that the remaining 1,855 companies that this rule affects are small businesses.

As we stated earlier, based on 2015 sales data, this rule is a benefit to industry of approximately \$71 million dollars per year. Small businesses accounted for about 20 percent of the royalties paid in 2015. Applying that percentage to industry costs, we estimate that this final rule will benefit all small-business lessors approximately \$14,200,000 per year. The amount will vary for each company depending on the volume of production that each small business produces and sells each year.

In sum, we do not estimate that this rule will result in a significant economic effect on a substantial number of small entities because this rule will benefit affected small businesses a collective total of \$14,200,000 per year.

### D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of \$100 million or more. We estimate that industry will annually benefit between \$60,100,000 and \$74,800,000. These figures are a reversal of the impacts described in the 2017 Valuation Rule, under Procedural Matters, item 1, starting at 81 FR 43359, and item 4, 81 FR 43368, but has been adjusted to include more current data. Therefore, the economic impact on industry, State and local governments and the Federal government will be below the \$100 million threshold that the Federal government uses to define a rule as having a significant impact on the economy.

(2) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. See Procedural Matters, item 1.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule will benefit U.S.-based enterprises.

### E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires. See Procedural Matters, item 1.

### F. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. This rule will apply to Federal oil, Federal gas, Federal coal, and Indian coal leases only. Therefore, this rule

does not require a Takings Implication Assessment.

### G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The management of Federal oil and gas leases, and Federal and Indian coal leases is the responsibility of the Secretary of the Interior. This rule does not impose administrative costs on States or local governments. This rule also does not substantially and directly affect the relationship between the Federal and State governments. Because this rule does not alter that relationship, this rule does not require a Federalism summary impact statement.

### H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of § 3(a), which requires that we review all regulations to eliminate errors and ambiguity and write them to minimize litigation.

(b) Meets the criteria of § 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

### I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the criteria in E.O. 13175, we evaluated this final rule and determined that it will have no potential effects on Federally-recognized Indian Tribes. Specifically, we determined that this rule will restore the historical valuation methodology for coal produced from Indian leases. Accordingly:

(1) We mailed letters, on April 3, 2017, to the Crow Tribe of Montana, Hopi Tribe of Arizona, and Navajo Nation to consult with the Tribes on both the Notice of Proposed Rulemaking and Advance Notice of Proposed Rulemaking for the proposed repeal of 2017 Indian coal valuation regulations.

(2) We consulted with the Navajo Nation on May 24, 2017, in Window Rock, Arizona.

(3) We consulted with the Crow Tribe on May 26, 2017, in Crow Agency, Montana.

(4) We consulted with the Hopi on June 21, 2017, in Kykotsmovi, Arizona.

**J. Paperwork Reduction Act**

This rule:

(1) Does not contain any new information collection requirements.

(2) Does not require a submission to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). See 5 CFR 1320.4(a)(2).

This rule will leave intact the information collection requirements that OMB already approved under OMB Control Numbers 1012-0004, 1012-0005, and 1012-0010.

**K. National Environmental Policy Act**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for a categorical exclusion under 43 CFR 46.210(i) in that this is “. . . of an administrative, financial, legal, technical, or procedural nature. . . .” This rule also qualifies for categorically exclusion under Departmental Manual, part 516, section 15.4.(C)(1) in that its impacts are limited to administrative, economic, or technological effects. We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that require further analysis under NEPA. The procedural changes resulting from the repeal of the 2017 Valuation Rule will have no consequence on the physical environment. This rule does not alter, in any material way, natural resources exploration, production, or transportation.

**L. Effects on the Nation's Energy Supply (E.O. 13211)**

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

**List of Subjects****30 CFR Part 1202**

Coal, Continental shelf, Government contracts, Indian lands, Mineral royalties, Natural gas, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

**30 CFR Part 1206**

Coal, Continental shelf, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources,

Reporting and recordkeeping requirements.

**Gregory J. Gould,**

*Director for Office of Natural Resources Revenue.*

**Authority and Issuance**

For the reasons discussed in the preamble, ONRR amends 30 CFR parts 1202 and 1206 as set forth below:

**PART 1202—ROYALTIES**

■ 1. The authority citation for part 1202 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

**Subpart B—Oil, Gas, and OCS Sulfur, General**

■ 2. In § 1202.51, revise paragraph (b) to read as follows:

**§ 1202.51 Scope and definitions.**

\* \* \* \* \*

(b) The definitions in subparts B, C, D, and E of part 1206 of this title are applicable to subparts B, C, D, and J of this part.

**Subpart F—Coal**

■ 3. Remove § 1202.251.

**PART 1206—PRODUCT VALUATION**

■ 4. The authority citation for part 1206 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

■ 5. Revise subpart A, consisting of § 1206.10, to read as follows:

**Subpart A—General Provisions and Definitions****§ 1206.10 Information collection.**

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms, filing date, and approved OMB clearance numbers are identified in § 1210.10.

■ 6. Revise subpart C to read as follows:

**Subpart C—Federal Oil**

Sec.

1206.100 What is the purpose of this subpart?

1206.101 What definitions apply to this subpart?

1206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?

1206.103 How do I value oil that is not sold under an arm's-length contract?

1206.104 What publications are acceptable to ONRR?

1206.105 What records must I keep to support my calculations of value under this subpart?

1206.106 What are my responsibilities to place production into marketable condition and to market production?

1206.107 How do I request a value determination?

1206.108 Does ONRR protect information I provide?

1206.109 When may I take a transportation allowance in determining value?

1206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

1206.111 How do I determine a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff?

1206.112 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?

1206.113 How will ONRR identify market centers?

1206.114 What are my reporting requirements under an arm's-length transportation contract?

1206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?

1206.116 What interest applies if I improperly report a transportation allowance?

1206.117 What reporting adjustments must I make for transportation allowances?

1206.119 How are the royalty quantity and quality determined?

1206.120 How are operating allowances determined?

**Subpart C—Federal Oil****§ 1206.100 What is the purpose of this subpart?**

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms “you” and “your” in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee's oil by applying the rules in this subpart to your disposition of the lessee's oil.

(c) If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to “you” and “your” in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee

must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(d) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) ONRR may audit and adjust all royalty payments.

#### **§ 1206.101 What definitions apply to this subpart?**

The following definitions apply to this subpart:

*Affiliate* means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

*ANS* means Alaska North Slope (ANS).

*Area* means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

*Arm's-length contract* means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

*Audit* means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

*BLM* means the Bureau of Land Management of the Department of the Interior.

*BOEM* means the Bureau of Ocean Energy Management of the Department of the Interior.

*BSEE* means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

*Condensate* means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*Contract* means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

*Designee* means the person the lessee designates to report and pay the lessee's royalties for a lease.

*Exchange agreement* means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be

two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

*Field* means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. BOEM names and designates boundaries of OCS fields.

*Gathering* means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively.

*Gross proceeds* means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or



removal of oil or gas—or the land area covered by that authorization, whichever the context requires.

*Lessee* means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

*Location differential* means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

*Market center* means a major point ONRR recognizes for oil sales, refining, or transshipment. Market centers generally are locations where ONRR-approved publications publish oil spot prices.

*Marketable condition* means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

*Netting* means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on form ONRR-2014.

*NYMEX price* means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the prompt month corresponding to each such day; and

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

*Oil* means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

*ONRR-approved publication* means a publication ONRR approves for determining ANS spot prices or WTI differentials.

*Outer Continental Shelf (OCS)* means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43

U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

*Prompt month* means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

*Quality differential* means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

*Rocky Mountain Region* means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the “Four Corners” area that lie within Colorado and Utah.

*Roll* means an adjustment to the NYMEX price that is calculated as follows:  $\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$ , where:  $P_0$  = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month;  $P_1$  = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and  $P_2$  = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays).

(1) *Example 1. Prices in Out Months are Lower Going Forward:* The month of production for which you must determine royalty value is March. March was the prompt month (for year 2003) from January 22 through February 20. April was the first month following the month of production, and May was the second month following the month of production.  $P_0$  therefore is the

average of the daily NYMEX settlement prices for deliveries during March published for each business day between January 22 and February 20.  $P_1$  is the average of the daily NYMEX settlement prices for deliveries during April published for each business day between January 22 and February 20.  $P_2$  is the average of the daily NYMEX settlement prices for deliveries during May published for each business day between January 22 and February 20. In this example, assume that  $P_0$  = \$28.00 per bbl,  $P_1$  = \$27.70 per bbl, and  $P_2$  = \$27.10 per bbl. In this example (a declining market),  $\text{Roll} = .6667 \times (\$28.00 - \$27.70) + .3333 \times (\$28.00 - \$27.10) = \$.20 + \$.30 = \$.50$ . You add this number to the NYMEX price.

(2) *Example 2. Prices in Out Months are Higher Going Forward:* The month of production for which you must determine royalty value is July. July 2003 was the prompt month from May 21 through June 20. August was the first month following the month of production, and September was the second month following the month of production.  $P_0$  therefore is the average of the daily NYMEX settlement prices for deliveries during July published for each business day between May 21 and June 20.  $P_1$  is the average of the daily NYMEX settlement prices for deliveries during August published for each business day between May 21 and June 20.  $P_2$  is the average of the daily NYMEX settlement prices for deliveries during September published for each business day between May 21 and June 20. In this example, assume that  $P_0$  = \$28.00 per bbl,  $P_1$  = \$28.90 per bbl, and  $P_2$  = \$29.50 per bbl. In this example (a rising market),  $\text{Roll} = .6667 \times (\$28.00 - \$28.90) + .3333 \times (\$28.00 - \$29.50) = (-\$ .60) + (-\$ .50) = -\$1.10$ . You add this negative number to the NYMEX price (effectively a subtraction from the NYMEX price).

*Sale* means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

*Spot price* means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

*Tendering program* means a producer's offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit.

*Trading month* means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, [www.nymex.com](http://www.nymex.com), in which case the NYMEX definition will apply.

*Transportation allowance* means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

*WTI differential* means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

(1) *Example.* Assume the production month was March 2003. Industry trade publications performed their price surveys and determined differentials during January 26 through February 25 for oil delivered in March. The WTI differential (for example, the West Texas Sour crude at Midland, Texas, spread versus WTI) applicable to valuing oil produced in the March 2003 production month would be determined using all the business days for which differentials were published during the period January 26 through February 25 excluding weekends and holidays (22

days). To calculate the WTI differential, add together all of the daily mean differentials published for January 26 through February 25 and divide that sum by 22.

(2) [Reserved]

**§ 1206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?**

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under § 1206.110 or § 1206.111. This value does not apply if you exercise an option to use a different value provided in paragraph (d)(1) or (d)(2)(i) of this section, or if one of the exceptions in paragraph (c) of this section applies. Use this paragraph (a) to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract, unless you exercise the option provided in paragraph (d)(2)(i) of this section.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) In conducting reviews and audits, if ONRR determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, ONRR may require that you value the oil sold under that contract either under § 1206.103 or at the total consideration received.

(2) You must value the oil under § 1206.103 if ONRR determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) ONRR will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(B) The fact that the price received by the seller under an arm's-length contract

is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless ONRR finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

(d)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either § 1206.102(a) or § 1206.103 to value your production for royalty purposes.

(i) If you use § 1206.102(a), your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, ONRR may require you to value the oil under § 1206.103. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 1206.102(d)(1) to use § 1206.102(a) or § 1206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every 2 years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 1206.102(a) or § 1206.103 to value your production for royalty purposes.

(ii) When you elect under § 1206.102(d)(2)(i) to use § 1206.102(a) or § 1206.103, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's length. You may not change your election more often than once every 2 years.

(e) If you value oil under paragraph (a) of this section:

(1) ONRR may require you to certify that your or your affiliate's arm's-length

contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(2) You must base value on the highest price the seller can receive through legally enforceable claims under the contract.

(i) If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. But you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits, if:

(A) The seller makes timely application for a price increase or benefit allowed under the contract;

(B) The purchaser refuses to comply; and

(C) The seller takes reasonable documented measures to force purchaser compliance.

(ii) Paragraph (e)(2)(i) of this section will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

#### **§ 1206.103 How do I value oil that is not sold under an arm's-length contract?**

This section explains how to value oil that you may not value under § 1206.102 or that you elect under § 1206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with ONRR approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent with the production month. (For example, if the production month is June, compute the average of the daily mean prices using the daily ANS spot prices published in the ONRR-approved publication for all the business days in June.)

(1) To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication.

(2) Use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 1206.112.

(4) After you select an ONRR-approved publication, you may not

select a different publication more often than once every 2 years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(1), (2), or (3) of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease or a portion of the lease is not part of a unit or communitization agreement) that you cannot value under § 1206.102 or that you elect under § 1206.102(d) to value under this section.

(1) If you have an ONRR-approved tendering program, you must value oil produced from leases in the area the tendering program covers at the highest winning bid price for tendered volumes.

(i) The minimum requirements for ONRR to approve your tendering program are:

(A) You must offer and sell at least 30 percent of your or your affiliates' production from both Federal and non-Federal leases in the area under your tendering program; and

(B) You must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(ii) If you do not have an ONRR-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (3) of this section. After you select either paragraph (b)(2) or (3) of this section, you may not change to the other method more often than once every 2 years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change methods, you must begin a new 2-year period.

(2) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your

affiliates' arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price (without the roll), adjusted for applicable location and quality differentials and transportation costs under § 1206.112.

(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the ONRR Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.112.

(2) If the ONRR Director determines that use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula used by industry to calculate the roll changes, ONRR may terminate or modify use of the roll under paragraph (c)(1) of this section at the end of each 2-year period following July 6, 2004, through notice published in the **Federal Register** not later than 60 days before the end of the 2-year period. ONRR will explain the rationale for terminating or modifying the use of the roll in this notice.

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may establish reasonable royalty value based on other relevant matters.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* (1) Instead of valuing your production under paragraph (a), (b), or (c) of this section, you may apply to the ONRR Director to establish a value representing the market at the refinery if:

(i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and

(ii) You must value your oil under this section at the NYMEX price or ANS spot price; and

(iii) You believe that use of the NYMEX price or ANS spot price results in an unreasonable royalty value.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that ONRR requires.

(3) If the ONRR Director establishes a value representing market value at the refinery, you may not take an allowance against that value under § 1206.112(b) unless it is included in the Director's approval.

#### **§ 1206.104 What publications are acceptable to ONRR?**

(a) ONRR periodically will publish in the **Federal Register** a list of acceptable publications for the NYMEX price and ANS spot price based on certain criteria, including, but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of estimates based on daily surveys of buyers and sellers of crude oil, and, for ANS spot prices, buyers and sellers of ANS crude oil; and

(4) Publications independent from ONRR, other lessors, and lessees.

(b) Any publication may petition ONRR to be added to the list of acceptable publications.

(c) ONRR will specify the tables you must use in the acceptable publications.

(d) ONRR may revoke its approval of a particular publication if it determines that the prices or differentials published in the publication do not accurately represent NYMEX prices or differentials or ANS spot market prices or differentials.

#### **§ 1206.105 What records must I keep to support my calculations of value under this subpart?**

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must be able to show:

(1) How you calculated the value you reported, including all adjustments for location, quality, and transportation, and

(2) How you complied with these rules.

(b) Recordkeeping requirements are found at part 1207 of this chapter.

(c) ONRR may review and audit your data, and ONRR will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

#### **§ 1206.106 What are my responsibilities to place production into marketable condition and to market production?**

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

#### **§ 1206.107 How do I request a value determination?**

(a) You may request a value determination from ONRR regarding any Federal lease oil production. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) ONRR will reply to requests expeditiously. ONRR may either:

(1) Issue a value determination signed by the Assistant Secretary, Policy, Management and Budget; or

(2) Issue a value determination by ONRR; or

(3) Inform you in writing that ONRR will not provide a value determination. Situations in which ONRR typically will not provide any value determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination signed by the Assistant Secretary, Policy, Management and Budget, is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay late payment interest under § 1218.54 of this chapter.

(3) A value determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) A value determination issued by ONRR is binding on ONRR and delegated States with respect to the specific situation addressed in the determination unless the ONRR (for ONRR-issued value determinations) or the Assistant Secretary modifies or rescinds it.

(1) A value determination by ONRR is not an appealable decision or order under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 1290.

(e) In making a value determination, ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart.

(f) A change in an applicable statute or regulation on which any value determination is based takes precedence over the value determination, regardless of whether the ONRR or the Assistant Secretary modifies or rescinds the value determination.

(g) The ONRR or the Assistant Secretary generally will not retroactively modify or rescind a value determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.108.

#### **§ 1206.108 Does ONRR protect information I provide?**

Certain information you submit to ONRR regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, ONRR will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

#### **§ 1206.109 When may I take a transportation allowance in determining value?**

(a) *Transportation allowances permitted when value is based on gross proceeds.* ONRR will allow a deduction

for the reasonable, actual costs to transport oil from the lease to the point off the lease under § 1206.110 or § 1206.111, as applicable. This paragraph applies when:

(1) You value oil under § 1206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and

(2) The movement to the sales point is not gathering.

(b) *Transportation allowances and other adjustments that apply when value is based on NYMEX prices or ANS spot prices.* If you value oil using NYMEX prices or ANS spot prices under § 1206.103, ONRR will allow an adjustment for certain location and quality differentials and certain costs associated with transporting oil as provided under § 1206.112.

(c) *Limits on transportation allowances.* (1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under § 1206.102 or § 1206.103 of this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask ONRR to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination. You may never reduce the royalty value of any production to zero.

(d) *Allocation of transportation costs.* You must allocate transportation costs among all products produced and transported as provided in §§ 1206.110 and 1206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *Liability for additional payments.* If ONRR determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under § 1218.54 of this chapter. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on form ONRR-2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate entry, ONRR may assess you an amount under § 1206.116.

**§ 1206.110 How do I determine a transportation allowance under an arm's-length transportation contract?**

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(1) and (2) of this section and subject to the limitation in § 1206.109(c). You must be able to demonstrate that your or your affiliate's contract is at arm's length. You do not need ONRR approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(1) If ONRR determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, ONRR may require that you calculate the transportation allowance under § 1206.111.

(2) You must calculate the transportation allowance under § 1206.111 if ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

- (i) Misconduct by or between the parties to the arm's-length contract; or
- (ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) ONRR will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's-length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless ONRR finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b) You may deduct any of the following actual costs you (including your affiliates) incur for transporting oil. You may not use as a deduction any cost that duplicates all or part of any other cost that you use under this paragraph.

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid for administration of a quality bank.

(4) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you to maintain, and that you do maintain, in the line as line fill. You must calculate this cost as follows:

(i) Multiply the volume that the pipeline requires you to maintain, and that you do maintain, in the pipeline by the value of that volume for the current month calculated under § 1206.102 or § 1206.103, as applicable; and

(ii) Multiply the value calculated under paragraph (b)(4)(i) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 1206.111(i)(2) by 12.

(5) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(6) Fees paid for short-term storage (30 days or less) incidental to transportation as required by a transporter.

(7) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(8) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(9) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower-gravity crude oil for transportation.

(10) Costs of securing a letter of credit, or other surety, that the pipeline requires you as a shipper to maintain.

(c) You may not deduct any costs that are not actual costs of transporting oil, including but not limited to the following:

(1) Fees paid for long-term storage (more than 30 days).

(2) Administrative, handling, and accounting fees associated with terminalling.

(3) Title and terminal transfer fees.

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees.

(5) Fees paid to brokers.

(6) Fees paid to a scheduling service provider.

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production.

(8) Gauging fees.

(d) If your arm's-length transportation contract includes more than one liquid

product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(1) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(2) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(3) You may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(e) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to ONRR.

(1) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your form ONRR-2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on form ONRR-2014.

(f) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, do not separately report the transportation factor as a transportation allowance on form ONRR-2014.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain ONRR approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

**§ 1206.111 How do I determine a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff?**

(a) This section applies if you or your affiliate do not have an arm's-length transportation contract, including situations where you or your affiliate

provide your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs include the following:

(1) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(2) Overhead under paragraph (f) of this section;

(3) Depreciation under paragraphs (g) and (h) of this section;

(4) A return on undepreciated capital investment under paragraph (i) of this section; and

(5) Once the transportation system has been depreciated below ten percent of total capital investment, a return on ten percent of total capital investment under paragraph (j) of this section.

(6) To the extent not included in costs identified in paragraphs (d) through (j) of this section, you may also deduct the following actual costs. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section:

(i) Volumetric adjustments for actual (not theoretical) line losses.

(ii) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you as a shipper to maintain, and that you do maintain, in the line as line fill. You must calculate this cost as follows:

(A) Multiply the volume that the pipeline requires you to maintain, and that you do maintain, in the pipeline by the value of that volume for the current month calculated under § 1206.102 or § 1206.103, as applicable; and

(B) Multiply the value calculated under paragraph (b)(6)(ii)(A) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 1206.111(i)(2) by 12.

(iii) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(iv) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(v) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower-gravity crude oil for transportation.

(vi) Fees paid to a non-affiliated quality bank administrator for administration of a quality bank.

(7) You may not deduct any costs that are not actual costs of transporting oil, including but not limited to the following:

(i) Fees paid for long-term storage (more than 30 days).

(ii) Administrative, handling, and accounting fees associated with terminalling.

(iii) Title and terminal transfer fees.

(iv) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees.

(v) Fees paid to brokers.

(vi) Fees paid to a scheduling service provider.

(vii) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production.

(viii) Theoretical line losses.

(ix) Gauging fees.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense which you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses which you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without

ONRR approval. You may not depreciate equipment below a reasonable salvage value.

(h) This paragraph describes the basis for your depreciation schedule.

(1) If you or your affiliate own a transportation system on June 1, 2000, you must base your depreciation schedule used in calculating actual transportation costs for production after June 1, 2000, on your total capital investment in the system (including your original purchase price or construction cost and subsequent reinvestment).

(2) If you or your affiliate purchased the transportation system at arm's length before June 1, 2000, you must incorporate depreciation on the schedule based on your purchase price (and subsequent reinvestment) into your transportation allowance calculations for production after June 1, 2000, beginning at the point on the depreciation schedule corresponding to that date. You must prorate your depreciation for calendar year 2000 by claiming part-year depreciation for the period from June 1, 2000 until December 31, 2000. You may not adjust your transportation costs for production before June 1, 2000, using the depreciation schedule based on your purchase price.

(3) If you are the original owner of the transportation system on June 1, 2000, or if you purchased your transportation system before March 1, 1988, you must continue to use your existing depreciation schedule in calculating actual transportation costs for production in periods after June 1, 2000.

(4) If you or your affiliate purchase a transportation system at arm's length from the original owner after June 1, 2000, you must base your depreciation schedule used in calculating actual transportation costs on your total capital investment in the system (including your original purchase price and subsequent reinvestment). You must prorate your depreciation for the year in which you or your affiliate purchased the system to reflect the portion of that year for which you or your affiliate own the system.

(5) If you or your affiliate purchase a transportation system at arm's length after June 1, 2000, from anyone other than the original owner, you must assume the depreciation schedule of the person from whom you bought the system. Include in the depreciation schedule any subsequent reinvestment.

(i)(1) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating

the transportation allowance by the rate of return provided in paragraph (i)(2) of this section.

(2) The rate of return is 1.3 times the industrial bond yield index for Standard & Poor's BBB bond rating. Use the monthly average rate published in "Standard & Poor's Bond Guide" for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(j)(1) After a transportation system has been depreciated at or below a value equal to ten percent of your total capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your total capital investment in the transportation system multiplied by a rate of return under paragraph (i)(2) of this section.

(2) You may apply this paragraph to a transportation system that before June 1, 2000, was depreciated at or below a value equal to ten percent of your total capital investment.

(k) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs consistently and equitably to each of the liquid products transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your form ONRR-2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within 3 months after first claiming the

allocated deductions on form ONRR-2014.

**§ 1206.112 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?**

This section applies when you use NYMEX prices or ANS spot prices to calculate the value of production under § 1206.103. As specified in this section, adjust the NYMEX price to reflect the difference in value between your lease and Cushing, Oklahoma, or adjust the ANS spot price to reflect the difference in value between your lease and the appropriate ONRR-recognized market center at which the ANS spot price is published (for example, Long Beach, California, or San Francisco, California). Paragraph (a) of this section explains how you adjust the value between the lease and the market center, and paragraph (b) of this section explains how you adjust the value between the market center and Cushing when you use NYMEX prices. Paragraph (c) of this section explains how adjustments may be made for quality differentials that are not accounted for through exchange agreements. Paragraph (d) of this section gives some examples. References in this section to "you" include your affiliates as applicable.

(a) To adjust the value between the lease and the market center:

(1)(i) For oil that you exchange at arm's length between your lease and the market center (or between any intermediate points between those locations), you must calculate a lease-to-market center differential by the applicable location and quality differentials derived from your arm's-length exchange agreement applicable to production during the production month.

(ii) For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm's length, you must obtain approval from ONRR for a location and quality differential. Until you obtain such approval, you may use the location and quality differential derived from that exchange agreement applicable to production during the production month. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties owed resulting from using ONRR's differential plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).



(2) For oil that you transport between your lease and the market center (or between any intermediate points between those locations), you may take an allowance for the cost of transporting that oil between the relevant points as determined under § 1206.110 or § 1206.111, as applicable.

(3) If you transport or exchange at arm's length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows:

(i) Determine the volume-weighted average of the lease-to-market center adjustment calculated under paragraphs (a)(1) and (2) of this section for the oil that you do transport or exchange (or both transport and exchange) from your lease to a market center.

(ii) Use that volume-weighted average lease-to-market center adjustment as the adjustment for the oil that you do not transport or exchange (or both transport and exchange) from your lease to a market center.

(4) If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. Until you obtain such approval, you may use your proposed adjustment. If ONRR prescribes a different adjustment, you must apply ONRR's adjustment to all periods for which you used your proposed adjustment. You must pay any additional royalties owed resulting from using ONRR's adjustment plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(5) You may not both take a transportation allowance and use a location and quality adjustment or exchange differential for the same oil between the same points.

(b) For oil that you value using NYMEX prices, adjust the value between the market center and Cushing, Oklahoma, as follows:

(1) If you have arm's-length exchange agreements between the market center and Cushing under which you exchange to Cushing at least 20 percent of all the oil you own at the market center during the production month, you must use the volume-weighted average of the location

and quality differentials from those agreements as the adjustment between the market center and Cushing for all the oil that you produce from the leases during that production month for which that market center is used.

(2) If paragraph (b)(1) of this section does not apply, you must use the WTI differential published in an ONRR-approved publication for the market center nearest your lease, for crude oil most similar in quality to your production, as the adjustment between the market center and Cushing. (For example, for light sweet crude oil produced offshore of Louisiana, use the WTI differential for Light Louisiana Sweet crude oil at St. James, Louisiana.) After you select an ONRR-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(3) If neither paragraph (b)(1) nor (b)(2) of this section applies, you may propose an alternative differential to ONRR. Until you obtain such approval, you may use your proposed differential. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties owed resulting from using ONRR's differential plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(c)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a) and (b) of this section, also adjust the NYMEX price or ANS spot price for quality based on premiums or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point approved by BSEE or BLM, as applicable. Make this adjustment only if and to the extent that such adjustments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil as adjusted is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), and (c)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do

not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content, unless ONRR approves a higher adjustment.

(d) The examples in this paragraph illustrate how to apply the requirement of this section.

(1) *Example.* Assume that a Federal lessee produces crude oil from a lease near Artesia, New Mexico. Further, assume that the lessee transports the oil to Roswell, New Mexico, and then exchanges the oil to Midland, Texas. Assume the lessee refines the oil received in exchange at Midland. Assume that the NYMEX price is \$30.00/bbl, adjusted for the roll; that the WTI differential (Cushing to Midland) is  $-\$.10/\text{bbl}$ ; that the lessee's exchange agreement between Roswell and Midland results in a location and quality differential of  $-\$.08/\text{bbl}$ ; and that the lessee's actual cost of transporting the oil from Artesia to Roswell is  $\$.40/\text{bbl}$ . In this example, the royalty value of the oil is  $\$30.00 - \$.10 - \$.08 - \$.40 = \$29.42/\text{bbl}$ .

(2) *Example.* Assume the same facts as in the example in paragraph (d)(1) of this section, except that the lessee transports and exchanges to Midland 40 percent of the production from the lease near Artesia, and transports the remaining 60 percent directly to its own refinery in Ohio. In this example, the 40 percent of the production would be valued at  $\$29.42/\text{bbl}$ , as explained in the previous example. In this example, the other 60 percent also would be valued at  $\$29.42/\text{bbl}$ .

(3) *Example.* Assume that a Federal lessee produces crude oil from a lease near Bakersfield, California. Further, assume that the lessee transports the oil to Hynes Station, and then exchanges the oil to Cushing which it further exchanges with oil it refines. Assume that the ANS spot price is  $\$20.00/\text{bbl}$ , and that the lessee's actual cost of transporting the oil from Bakersfield to Hynes Station is  $\$.28/\text{bbl}$ . The lessee must request approval from ONRR for a location and quality adjustment between Hynes Station and Long Beach. For example, the lessee likely would propose using the tariff on Line 63 from Hynes Station to Long Beach as the adjustment between those points. Assume that adjustment to be  $\$.72$ , including the sulfur and gravity bank adjustments, and that ONRR approves the lessee's request. In this example, the preliminary (because the location and quality adjustment is subject to ONRR review) royalty value of the oil is

\$20.00 – \$.72 – \$.28 = \$19.00/bbl. The fact that oil was exchanged to Cushing does not change use of ANS spot prices for royalty valuation.

**§ 1206.113 How will ONRR identify market centers?**

ONRR periodically will publish in the **Federal Register** a list of market centers. ONRR will monitor market activity and, if necessary, add to or modify the list of market centers and will publish such modifications in the **Federal Register**. ONRR will consider the following factors and conditions in specifying market centers:

- (a) Points where ONRR-approved publications publish prices useful for index purposes;
- (b) Markets served;
- (c) Input from industry and others knowledgeable in crude oil marketing and transportation;
- (d) Simplification; and
- (e) Other relevant matters.

**§ 1206.114 What are my reporting requirements under an arm's-length transportation contract?**

You or your affiliate must use a separate entry on form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur. ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 1207 of this chapter.

**§ 1206.115 What are my reporting requirements under a non-arm's-length transportation arrangement?**

(a) You or your affiliate must use a separate entry on form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur.

(b) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems. Section 1206.117 will apply when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 1207 of this chapter.

**§ 1206.116 What interest applies if I improperly report a transportation allowance?**

(a) If you or your affiliate deducts a transportation allowance on form

ONRR–2014 that exceeds 50 percent of the value of the oil transported without obtaining ONRR's prior approval under § 1206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate files an exception request that ONRR approves. If you do not file an exception request, or if ONRR does not approve your request, you must pay interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

(b) If you or your affiliate takes a deduction for transportation on form ONRR–2014 by improperly netting an allowance against the oil instead of reporting the allowance as a separate entry, ONRR may assess a civil penalty under 30 CFR part 1241.

**§ 1206.117 What reporting adjustments must I make for transportation allowances?**

(a) If your or your affiliate's actual transportation allowance is less than the amount you claimed on form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under § 1218.54 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on form ONRR–2014 for any month during the allowance form reporting period, you are entitled to a credit plus interest under applicable rules.

**§ 1206.119 How are royalty quantity and quality determined?**

(a) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases or BSEE for offshore leases.

(b) If the value of oil determined under this subpart is based upon a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for onshore leases or BSEE for offshore leases, adjust the value for those differences in quantity or quality.

(c) Any actual loss that you may incur before the royalty settlement metering or measurement point is not subject to royalty if BLM or BSEE, as appropriate, determines that the loss is unavoidable.

(d) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point

of royalty settlement or for theoretical losses that are claimed to have taken place either before or after the approved point of royalty settlement.

**§ 1206.120 How are operating allowances determined?**

BOEM may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. BOEM will specify the allowance amount or formula in the notice of sale and in the lease agreement.

■ 7. Revise subpart D to read as follows:

**Subpart D—Federal Gas**

Sec.

1206.150 Purpose and scope.

1206.151 Definitions.

1206.152 Valuation standards—unprocessed gas.

1206.153 Valuation standards—processed gas.

1206.154 Determination of quantities and qualities for computing royalties.

1206.155 Accounting for comparison.

1206.156 Transportation allowances—general.

1206.157 Determination of transportation allowances.

1206.158 Processing allowances—general.

1206.159 Determination of processing allowances.

1206.160 Operating allowances.

**Subpart D—Federal Gas**

**§ 1206.150 Purpose and scope.**

(a) This subpart is applicable to all gas production from Federal oil and gas leases. The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the regulations in this subpart are inconsistent with:

- (1) A Federal statute;
- (2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;
- (3) A written agreement between the lessee and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart; then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(c) All royalty payments made to ONRR are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the

administration of oil and gas leases is discharged in accordance with the requirements of the governing mineral leasing laws and lease terms.

#### § 1206.151 Definitions.

For purposes of this subpart:

*Affiliate* means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: The percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, pipeline, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

*Allowance* means a deduction in determining value for royalty purposes. *Processing allowance* means an allowance for the reasonable, actual costs of processing gas determined under this subpart. *Transportation allowance* means an allowance for the reasonable, actual costs of moving unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off the lease, unit area, or communized area, or away from a processing plant. The transportation allowance does not include gathering costs.

*Area* means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

*Arm's-length contract* means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

*Audit* means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

*BLM* means the Bureau of Land Management of the Department of the Interior.

*BOEM* means the Bureau of Ocean Energy Management of the Department of the Interior.

*BSEE* means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

*Compression* means the process of raising the pressure of gas.

*Condensate* means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

*Field* means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by BOEM.

*Gas* means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor

volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

*Gas plant products* means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

*Gathering* means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communized area, or to a central accumulation or treatment point off the lease, unit or communized area as approved by BLM or BSEE OCS operations personnel for onshore and OCS leases, respectively.

*Gross proceeds* (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the gas, residue gas, and gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

*Lease products* means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal leases.

*Lessee* means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

*Like-quality lease products* means lease products which have similar chemical, physical, and legal characteristics.

*Marketable condition* means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

*Marketing affiliate* means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

*Minimum royalty* means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

*Net-back method* (or work-back method) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale pursuant to an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

*Net output* means the quantity of residue gas and each gas plant product that a processing plant produces.

*Net profit share* (for applicable Federal leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

*Netting* means the deduction of an allowance from the sales value by reporting a net sales value, instead of correctly reporting the deduction as a separate entry on form ONRR-2014.

*Outer Continental Shelf (OCS)* means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

*Posted price* means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

*Processing* means any process designed to remove elements or

compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

*Residue gas* means that hydrocarbon gas consisting principally of methane resulting from processing gas.

*Sales type code* means the contract type or general disposition (e.g., arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation or processing allowance.

*Section 6 lease* means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

*Spot sales agreement* means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

*Warranty contract* means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields.

#### **§ 1206.152 Valuation standards—unprocessed gas.**

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing (including all gas where the lessee's arm's-length contract for the sale of that gas prior to processing provides for the value to be determined on the basis of a percentage of the purchaser's proceeds resulting from processing the gas). This section also applies to processed gas that must be valued prior to processing in accordance with § 1206.155 of this part. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 1206.153 of this part shall apply instead of this section.

(2) The value of production, for royalty purposes, of gas subject to this subpart shall be the value of gas determined under this section less applicable allowances.

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate. Also, where the lessee's arm's-length contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production, for royalty purposes, shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

(ii) In conducting reviews and audits, ONRR will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then the ONRR may require that the gas sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the ONRR determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the gas production be valued pursuant to paragraph (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(iv) How to value over-delivered volumes under a cash-out program: This paragraph applies to situations where a pipeline purchases gas from a lessee

according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if ONRR determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (3) of this section.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by ONRR, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by ONRR.

(3) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in

the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then ONRR shall accept such maximum price as the value. For purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed in paragraph (d)(1) of this section shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and ONRR will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify ONRR if it has determined value pursuant to paragraph (c)(2) or (3) of this section. The notification shall be by letter to the ONRR Director for Office of Natural Resources Revenue or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a form ONRR-2014 using a valuation method authorized by paragraph (c)(2) or (3) of this section, and each time there is a change in a method under paragraph (c)(2) or (3) of this section.

(f) If ONRR determines that a lessee has not properly determined value, the lessee shall pay the difference, if any,

between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by ONRR. The lessee shall also pay interest on that difference computed pursuant to § 1218.54 of this chapter. If the lessee is entitled to a credit, ONRR will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from ONRR. In that event, the lessee shall propose to ONRR a value determination method, and may use that method in determining value for royalty purposes until ONRR issues its decision. The lessee shall submit all available data relevant to its proposal. The ONRR shall expeditiously determine the value based upon the lessee's proposal and any additional information ONRR deems necessary. In making a value determination ONRR may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After ONRR issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances.

(i) The lessee must place gas in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value will be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition or to market the gas.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser

compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by ONRR of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to ONRR to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

#### **§ 1206.153 Valuation standards—processed gas.**

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 1206.152 of this part. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right.

(2) The value of production, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 1206.102 of this part, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section. The lessee shall have the burden of demonstrating that

its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting these reviews and audits, ONRR will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then the ONRR may require that the residue gas or gas plant product sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the ONRR determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the residue gas or gas plant product be valued pursuant to paragraph (c)(2) or (3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(iv) How to value over-delivered volumes under a cash-out program: This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if ONRR determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (3) of this section.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by ONRR, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by ONRR.

(3) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then ONRR shall accept such maximum price as the value. For the purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed by paragraph (d)(1) of this section shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and ONRR will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify ONRR if it has determined any value pursuant to paragraph (c)(2) or (3) of this section. The notification shall be by letter to the ONRR Director for Office of Natural Resources or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a form ONRR-2014 using a valuation method authorized by paragraph (c)(2) or (3) of this section, and each time there is a change in a method under paragraph (c)(2) or (3) of this section.

(f) If ONRR determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by ONRR. The lessee shall also pay interest computed on that difference pursuant to § 1218.54 of this chapter. If the lessee is

entitled to a credit, ONRR will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from ONRR. In that event, the lessee shall propose to ONRR a value determination method, and may use that method in determining value for royalty purposes until ONRR issues its decision. The lessee shall submit all available data relevant to its proposal. The ONRR shall expeditiously determine the value based upon the lessee's proposal and any additional information ONRR deems necessary. In making a value determination, ONRR may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After ONRR issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(i) The lessee must place residue gas and gas plant products in marketable condition and market the residue gas and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value will be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition or to market the residue gas and gas plant products.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until

monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by ONRR of value under this section shall be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to ONRR to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

#### **§ 1206.154 Determination of quantities and qualities for computing royalties.**

(a)(1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM or BSEE for onshore and OCS leases, respectively.

(2) If the value of gas determined pursuant to § 1206.152 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or BSEE, that value shall be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 1206.153 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value shall be adjusted for



the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to

have been unavoidable by BLM or BSEE, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and § 1206.151(c), royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

#### **§ 1206.155 Accounting for comparison.**

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of:

(1) The combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 1206.153 of this subpart, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 1206.102 of this subpart; or

(2) The value, for royalty purposes, of the gas prior to processing determined in accordance with § 1206.152 of this subpart.

(b) The requirement for accounting for comparison contained in the terms of leases will govern as provided in § 1206.150(b) of this subpart. When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

#### **§ 1206.156 Transportation allowances—general.**

(a) Where the value of gas has been determined pursuant to § 1206.152 or § 1206.153 of this subpart at a point (e.g., sales point or point of value determination) off the lease, ONRR shall allow a deduction for the reasonable actual costs incurred by the lessee to

transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated among all products produced and transported as provided in § 1206.157.

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 1206.152 of this subpart, the transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the unprocessed gas determined under § 1206.152 of this subpart.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 1206.153 of this subpart, the transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the residue gas or gas plant product determined under § 1206.153 of this subpart. For purposes of this section, natural gas liquids will be considered one product.

(3) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (2) of this section were reasonable, actual, and necessary. An application for exception (using form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination. Under no circumstances may the value for royalty purposes under any sales type code be reduced to zero.

(d) If, after a review or audit, ONRR determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee must pay any additional royalties, plus interest, determined in accordance with § 1218.54 of this chapter, or will be entitled to a credit, with interest. If the lessee takes a deduction for transportation on form ONRR-2014 by improperly netting the allowance against the sales value of the unprocessed gas, residue gas, and gas plant products instead of reporting the allowance as a separate entry, ONRR may assess a civil penalty under 30 CFR part 1241.

**§ 1206.157 Determination of transportation allowances.**

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee under an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, except as provided in paragraphs (a)(1)(ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. ONRR's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Such allowances shall be subject to the provisions of paragraph (f) of this section. The lessee must claim a transportation allowance by reporting it as a separate entry on the form ONRR-2014.

(ii) In conducting reviews and audits, ONRR will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the ONRR may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the ONRR determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(2)(i) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have

no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty bearing without ONRR approval.

(ii) Notwithstanding the requirements of paragraph (a)(2)(i) of this section, the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. ONRR shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information ONRR deems necessary. The lessee must submit the allocation proposal within 3 months of claiming the allocated deduction on the form ONRR-2014.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, ONRR will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without ONRR approval.

**(b) Non-arm's-length or no contract.**

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. The lessee must claim a transportation

allowance by reporting it as a separate entry on the form ONRR-2014. When necessary or appropriate, ONRR may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation.

With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The ONRR shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return must be 1.3 times the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without ONRR approval.

(ii) Notwithstanding the requirements of paragraph (b)(3)(i) of this section, the lessee may propose to the ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. ONRR shall then determine the transportation allowance based upon the lessee's proposal and any additional information ONRR deems necessary. The lessee must submit the allocation proposal within 3

months of claiming the allocated deduction on the form ONRR-2014.

(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (4) of this section.

(i) ONRR will grant the exception if:

(A) The transportation system has a tariff filed with the Federal Energy Regulatory Commission (FERC) or a State regulatory agency, that FERC or the State regulatory agency has permitted to become effective, and

(B) Third parties are paying prices, including discounted prices, under the tariff to transport gas on the system under arm's-length transportation contracts.

(ii) If ONRR approves the exception, you must calculate your transportation allowance for each production month based on the lesser of the volume-weighted average of the rates paid by the third parties under arm's-length transportation contracts during that production month or the non-arm's-length payment by the lessee to the pipeline.

(iii) If during any production month there are no prices paid under the tariff by third parties to transport gas on the system under arm's-length transportation contracts, you may use the volume-weighted average of the rates paid by third parties under arm's-length transportation contracts in the most recent preceding production month in which the tariff remains in effect and third parties paid such rates, for up to five successive production months. You must use the non-arm's-length payment by the lessee to the pipeline if it is less than the volume-weighted average of the rates paid by third parties under arm's-length contracts.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) You must use a separate entry on form ONRR-2014 to notify ONRR of a transportation allowance.

(ii) ONRR may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 1207 of this chapter.

(iii) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

(2) *Non-arm's-length or no contract.*

(i) You must use a separate entry on form ONRR-2014 to notify ONRR of a transportation allowance.

(ii) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable gas

transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems. Paragraph (e) of this section will apply when you amend your report based on your actual costs.

(iii) ONRR may require you to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 1207 of this chapter.

(iv) If you are authorized under paragraph (b)(5) of this section to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of paragraph (c)(1) of this section.

(v) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

(d) *Interest and assessments.* (1) If a lessee deducts a transportation allowance on its form ONRR-2014 that exceeds 50 percent of the value of the gas transported without obtaining prior approval of ONRR under § 1206.156, the lessee shall pay interest on the excess allowance amount taken from the date such amount is taken to the date the lessee files an exception request with ONRR.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 1218.54 of this chapter.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on form ONRR-2014 for each month during the allowance reporting period, the lessee shall be required to pay additional royalties due plus interest computed under § 1218.54 of this chapter from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to ONRR. If the actual transportation allowance is greater than the amount the lessee has taken on form ONRR-2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected form ONRR-2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected form ONRR-2014 to reflect actual costs, together with its payment, in accordance with instructions provided by ONRR. If the lessee's estimated transportation allowance is less than the allowance based on actual costs, the refund procedure will be specified by ONRR.

(f) *Allowable costs in determining transportation allowances.* You may include, but are not limited to (subject to the requirements of paragraph (g) of this section), the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this paragraph.

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees paid to a pipeline, including charges or fees for unused firm capacity that you have not sold before you report your allowance. If you receive a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the form ONRR-2014 by the amount of that payment. You must modify the form ONRR-2014 by the amount received or credited for the affected reporting period, and pay any resulting royalty and late payment interest due;

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC Orders in 18 CFR part 284;

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service;

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines;

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization

programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs;

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses;

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* However, theoretical losses are not deductible in non-arm's-length transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC- or State regulatory-approved tariff under paragraph (b)(5) of this section. If you receive volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties and late payment interest due;

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as "parking" or "banking"), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less; and

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under §§ 1206.152(i) and 1206.153(i) of this part.

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you as a shipper to maintain under an arm's-length transportation contract.

(g) *Nonallowable costs in determining transportation allowances.* Lessees may not include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days;

(2) *Aggregator/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production;

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within the tolerances;

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point;

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point; and

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline;

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub;

(5) *Fees paid to brokers.* This includes fees paid to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees;

(6) *Fees paid to scheduling service providers.* This includes fees paid to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees;

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production; and

(8) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* Use this section when calculating transportation costs to establish value using a netback procedure or any other procedure that requires deduction of transportation costs.

#### **§ 1206.158 Processing allowances—general.**

(a) Where the value of gas is determined pursuant to § 1206.153 of this subpart, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product

and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas ONRR may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66 2/3 percent of the value of each gas plant product determined in accordance with § 1206.153 of this subpart (such value to be reduced first for any transportation allowances related to postprocessing transportation authorized by § 1206.156 of this subpart).

(3) Upon request of a lessee, ONRR may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception (using form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for ONRR to make a determination. Under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, ONRR will not grant any processing allowance for processing lease production which is not royalty bearing.

(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to ONRR for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can

demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior ONRR approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to ONRR in a form and manner prescribed by ONRR.

(e) If ONRR determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee must pay any additional royalties, plus interest determined under § 1218.54 of this chapter, or will be entitled to a credit with interest. If the lessee takes a deduction for processing on form ONRR-2014 by improperly netting the allowance against the sales value of the gas plant products instead of reporting the allowance as a separate entry, ONRR may assess a civil penalty under 30 CFR part 1241.

#### **§ 1206.159 Determination of processing allowances.**

(a) *Arm's-length processing contracts.*

(1)(i) For processing costs incurred by a lessee under an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. ONRR's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. The lessee must claim a processing allowance by reporting it as a separate entry on the form ONRR-2014.

(ii) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then the ONRR may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If ONRR determines that the consideration paid pursuant to an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and lessor, then ONRR shall require that the processing allowance be

determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the processing may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty-bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. The lessee may use its proposed allocation procedure until ONRR issues its determination. The lessee shall submit all relevant data to support its proposal. ONRR shall then determine the processing allowance based upon the lessee's proposal and any additional information ONRR deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing. The lessee must submit the allocation proposal within 3 months of claiming the allocated deduction on form ONRR-2014.

(4) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. The lessee must claim a processing allowance by reflecting it as a separate entry on the form ONRR-2014. When necessary or appropriate, ONRR may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing during the reporting

period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of the ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The ONRR shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance

shall be provided for depreciation. This alternative shall apply only to plants first placed in service after March 1, 1988.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to ONRR for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. The ONRR may grant the exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts; if the ONRR grants the exception, the lessee shall use as its processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements*—(1) *Arm's-length contracts*. (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate entry on the form ONRR-2014.

(ii) ONRR may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.

(2) *Non-arm's-length or no contract*. (i) The lessee must notify ONRR of an allowance based on the incurred costs by using a separate entry on the form ONRR-2014.

(ii) For new processing plants, the lessee's initial deduction shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant or, if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(iii) Upon request by ONRR, the lessee shall submit all data used to prepare the

allowance deduction. The data shall be provided within a reasonable period of time, as determined by ONRR.

(iv) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(d) *Interest*. (1) If a lessee deducts a processing allowance on its form ONRR-2014 that exceeds 66  $\frac{2}{3}$  percent of the value of the gas processed without obtaining prior approval of ONRR under § 1206.158, the lessee shall pay interest on the excess allowance amount taken from the date such amount is taken to the date the lessee files an exception request with ONRR.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 1218.54 of this chapter.

(e) *Adjustments*. (1) If the actual processing allowance is less than the amount the lessee has taken on form ONRR-2014 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under § 1218.54 of this chapter from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to ONRR. If the actual processing allowance is greater than the amount the lessee has taken on form ONRR-2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit with interest.

(2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected form ONRR-2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected form ONRR-2014 to reflect actual costs, together with its payment, in accordance with instructions provided by ONRR. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by ONRR.

(f) *Other processing cost determinations*. The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation

procedure or any other procedure that requires deduction of processing costs.

#### § 1206.160 Operating allowances.

Notwithstanding any other provisions in these regulations, an operating allowance may be used for the purpose of computing payment obligations when specified in the notice of sale and the lease. The allowance amount or formula shall be specified in the notice of sale and in the lease agreement.

■ 8. Revise subpart F to read as follows:

#### Subpart F—Federal Coal

Sec.

- 1206.250 Purpose and scope.
- 1206.251 Definitions.
- 1206.252 Information collection.
- 1206.253 Coal subject to royalties—general provisions.
- 1206.254 Quality and quantity measurement standards for reporting and paying royalties.
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#### Subpart F—Federal Coal

##### § 1206.250 Purpose and scope.

(a) This subpart is applicable to all coal produced from Federal coal leases. The purpose of this subpart is to establish the value of coal produced for royalty purposes, of all coal from Federal leases consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute or settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart then the statute, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments made to the Office of Natural Resources Revenue (ONRR) are subject to later audit and adjustment.

##### § 1206.251 Definitions.

*Ad valorem lease* means a lease where the royalty due to the lessor is based

upon a percentage of the amount or value of the coal.

*Allowance* means a deduction used in determining value for royalty purposes. Coal washing allowance means an allowance for the reasonable, actual costs incurred by the lessee for coal washing. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant.

*Area* means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

*Arm's-length contract* means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

- (a) Ownership in excess of 50 percent constitutes control;
- (b) Ownership of 10 through 50 percent creates a presumption of control; and
- (c) Ownership of less than 10 percent creates a presumption of noncontrol which ONRR may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The ONRR may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

*Audit* means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

*BLM* means the Bureau of Land Management of the Department of the Interior.

*Coal* means coal of all ranks from lignite through anthracite.

*Coal washing* means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation, air,

water, or heavy media separation; drying; and related handling (or combination thereof).

*Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

*Gross proceeds* (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land covered by that authorization, whichever is required by the context.

*Lessee* means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

*Like-quality coal* means coal that has similar chemical and physical characteristics.

*Marketable condition* means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

*Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that



contribute directly or indirectly to mining, production, preparation, and handling of lease products.

*Net-back method* means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

*Net output* means the quantity of washed coal that a washing plant produces.

*Netting* is the deduction of an allowance from the sales value by reporting a one line net sales value, instead of correctly reporting the deduction as a separate line item on the form ONRR-4430.

*Person* means by individual, firm, corporation, association, partnership, consortium, or joint venture.

*Sales type code* means the contract type or general disposition (e.g., arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation or washing allowance.

*Spot market price* means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

#### **§ 1206.252 Information collection.**

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms, filing date, and approved OMB control numbers are identified in part 1210—Forms and Reports.

#### **§ 1206.253 Coal subject to royalties—general provisions.**

(a) All coal (except coal unavoidably lost as determined by BLM under 43 CFR part 3400) from a Federal lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) If waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; *i.e.*, underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal leases shall be allocated to such leases regardless of whether it is stored on Federal lands. The lessee shall maintain accurate records to determine to which individual Federal lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

#### **§ 1206.254 Quality and quantity measurement standards for reporting and paying royalties.**

For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information will be reported on appropriate forms required under 30 CFR part 1210—Forms and Reports.

#### **§ 1206.255 Point of royalty determination.**

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Federal coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and ONRR.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. ONRR may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at § 1206.256(d) of this subpart.

#### **§ 1206.256 Valuation standards for cents-per-ton leases.**

(a) This section is applicable to coal leases on Federal lands which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal

used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 1206.257 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.

#### **§ 1206.257 Valuation standards for ad valorem leases.**

(a) This section is applicable to coal leases on Federal lands which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined under this section, less applicable coal washing allowances and transportation allowances determined under §§ 1206.258 through 1206.262 of this subpart, or any allowance authorized by § 1206.265 of this subpart. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (3), and (5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal produced. If the contract does not reflect the total consideration, then the ONRR may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be based on less than the gross proceeds accruing to the lessee for the coal production, including the additional consideration.

(3) If ONRR determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the coal production be valued pursuant to paragraph (c)(2)(ii), (iii), (iv), or (v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.

(5) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to ONRR's satisfaction, were not part of the total consideration paid for the purchase of coal production.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition of produced coal by other than an arm's-length contract), provided that those gross proceeds are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts between buyers and sellers neither of whom is affiliated with the lessee for sales, purchases, or other dispositions of like-quality coal produced in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal;

(ii) Prices reported for that coal to a public utility commission;

(iii) Prices reported for that coal to the Energy Information Administration of the Department of Energy;

(iv) Other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of coal;

(v) If a reasonable value cannot be determined using paragraphs (c)(2) (i), (ii), (iii), or (iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraph (b)(5) of this section.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require ONRR's prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and ONRR will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales value and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify ONRR if it has determined value pursuant to paragraphs (c)(2)(ii), (iii), (iv), or (v) of this section. The notification shall be by letter to the Director for Office of Natural Resources Revenue of his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on the form ONRR-4430 using a valuation method authorized by paragraphs (c)(2)(ii), (iii), (iv), or (v) of this section, and each time there is a change in a method under paragraphs (c)(2)(iv) or (v) of this section.

(e) If ONRR determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and

the royalty payments that are due based upon the value established by ONRR. The lessee shall also be liable for interest computed pursuant to § 1218.202 of this chapter. If the lessee is entitled to a credit, ONRR will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from ONRR. In that event, the lessee shall propose to ONRR a value determination method, and may use that method in determining value for royalty purposes until ONRR issues its decision. The lessee shall submit all available data relevant to its proposal. The ONRR shall expeditiously determine the value based upon the lessee's proposal and any additional information ONRR deems necessary. That determination shall remain effective for the period stated therein. After ONRR issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to §§ 1206.258 through 1206.262 and 1206.265 of this subpart.

(h) The lessee is required to place coal in marketable condition at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless ONRR approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures,

which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by ONRR of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to ONRR to support valuation proposals, including transportation, coal washing, or other allowances under § 1206.265 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

#### **§ 1206.258 Washing allowances—general.**

(a) For ad valorem leases subject to § 1206.257 of this subpart, ONRR shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 1206.257 of this subpart was based upon like-quality unwashed coal. Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(b) If ONRR determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with § 1218.202 of this chapter, or shall be entitled to a credit without interest.

(c) Lessees shall not disproportionately allocate washing costs to Federal leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the

washed coal is sold and royalties are reported and paid.

#### **§ 1206.259 Determination of washing allowances.**

(a) *Arm's-length contracts.* (1) For washing costs incurred by a lessee under an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. ONRR's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. The lessee must claim a washing allowance by reporting it as a separate line entry on the form ONRR-4430.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then the ONRR may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If ONRR determines that the consideration paid pursuant to an arm's-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the washing may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract

situation are subject to monitoring, review, audit, and possible future adjustment. The lessee must claim a washing allowance by reporting it as a separate line entry on the form ONRR-4430. When necessary or appropriate, ONRR may direct a lessee to modify its estimated or actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for washing during the reported period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv) (A) of this section, or a cost equal to the depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the wash plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes, rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of the ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the wash plant services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in

ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) ONRR shall allow as a cost an amount equal to the allowable capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after March 1, 1989.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) *Reporting requirements*—(1) *Arm's-length contracts*. (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate line entry on the form ONRR-4430.

(ii) ONRR may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.

(2) *Non-arm's-length or no contract*. (i) The lessee must notify ONRR of an allowance based on the incurred costs by using a separate line entry on the form ONRR-4430.

(ii) For new washing facilities or arrangements, the lessee's initial washing deduction shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the washing system or, if such data are not available, the lessee shall use estimates based upon industry data for similar washing systems.

(iii) Upon request by ONRR, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by ONRR.

(d) *Interest and assessments*. (1) If a lessee nets a washing allowance on the form ONRR-4430, then the lessee shall be assessed an amount up to 10 percent of the allowance netted not to exceed \$250 per lease sales type code per sales period.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 1218.202 of this chapter.

(e) *Adjustments*. (1) If the actual coal washing allowance is less than the amount the lessee has taken on form ONRR-4430 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under § 1218.202 of this chapter from the date when the lessee took the deduction to the date the lessee repays the difference to ONRR. If the actual washing allowance is greater than the amount the lessee has taken on form ONRR-4430 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected form ONRR-4430 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR.

(f) *Other washing cost determinations*. The provisions of this section shall apply to determine washing costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of washing costs.

#### § 1206.260 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, unless determined otherwise by BLM, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

#### § 1206.261 Transportation allowances—general.

(a) For ad valorem leases subject to § 1206.257 of this subpart, where the value for royalty purposes has been determined at a point remote from the lease or mine, ONRR shall, as authorized by this section, allow a

deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from a Federal lease to a sales point which is remote from both the lease and mine; or

(2) Transport the coal from a Federal lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point. In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(c)(1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, ONRR determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with § 1218.202 of this chapter, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Federal leases.

#### § 1206.262 Determination of transportation allowances.

(a) *Arm's-length contracts*. (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. The lessee must claim a transportation allowance by

reporting it as a separate line entry on the form ONRR-4430.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, then the ONRR may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If ONRR determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract—*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. The lessee must claim a transportation allowance by reporting it as a separate line entry on the form ONRR-4430. When necessary or appropriate, ONRR may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the depreciable

investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) ONRR shall allow as a cost an amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after March 1, 1989.

(v) The rate of return must be the industrial rate associated with Standard

and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) A lessee may apply to ONRR for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (2) of this section. ONRR will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency or by a State regulatory agency (for Federal leases). ONRR shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, ONRR shall deny the exception request if:

(i) No Federal or State regulatory agency costs analysis exists and the Federal or State regulatory agency, as applicable, has declined to investigate under ONRR timely objections upon filing; and

(ii) The rate significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements—*(1) *Arm's-length contracts.* (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate line entry on the form ONRR-4430.

(ii) ONRR may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.

(2) *Non-arm's-length or no contract—*(i) The lessee must notify ONRR of an allowance based on the incurred costs by using a separate line entry on form ONRR-4430.

(ii) For new transportation facilities or arrangements, the lessee's initial deduction shall include estimates of the allowable coal transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(iii) Upon request by ONRR, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by ONRR.

(iv) If the lessee is authorized to use its Federal- or State-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(d) *Interest and assessments.* (1) If a lessee nets a transportation allowance on form ONRR-4430, the lessee shall be assessed an amount of up to 10 percent of the allowance netted not to exceed \$250 per lease sales type code per sales period.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 1218.202 of this chapter.

(e) *Adjustments.* (1) If the actual coal transportation allowance is less than the amount the lessee has taken on form ONRR-4430 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under § 1218.202 of this chapter from the date when the lessee took the deduction to the date the lessee repays the difference to ONRR. If the actual transportation allowance is greater than amount the lessee has taken on form ONRR-4430 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected form ONRR-4430 to reflect actual costs, together with any payments, in accordance with instructions provided by ONRR.

(f) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

#### § 1206.263 [Reserved]

#### § 1206.264 In-situ and surface gasification and liquefaction operations.

If an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to ONRR. The ONRR will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until ONRR issues a value determination.

#### § 1206.265 Value enhancement of marketable coal.

If, prior to use, sale, or other disposition, the lessee enhances the value of coal after the coal has been placed in marketable condition in accordance with § 1206.257(h) of this subpart, the lessee shall notify ONRR that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of § 1206.257(c)(2)(i) through (iv) of this subpart; or,

(b) In the event that a value cannot be established in accordance with paragraph (a) of this section, then the value of production will be determined in accordance with § 1206.257(c)(2)(v) of this subpart and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by ONRR-approved processing costs and procedures including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under § 1206.259(b)(2)(v) of this subpart.

■ 9. Revise subpart J to read as follows:

#### Subpart J—Indian Coal

Sec.

1206.450 Purpose and scope.

1206.451 Definitions.

1206.452 Coal subject to royalties—general provisions.

1206.453 Quality and quantity measurement standards for reporting and paying royalties.

1206.454 Point of royalty determination.

1206.455 Valuation standards for cents-per-ton leases.

1206.456 Valuation standards for ad valorem leases.

1206.457 Washing allowances—general.

1206.458 Determination of washing allowances.

1206.459 Allocation of washed coal.

1206.460 Transportation allowances—general.

1206.461 Determination of transportation allowances.

1206.462 [Reserved]

1206.463 In-situ and surface gasification and liquefaction operations.

1206.464 Value enhancement of marketable coal.

#### Subpart J—Indian Coal

##### § 1206.450 Purpose and scope.

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal from Indian Tribal and allotted leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) If the specific provisions of any statute, treaty, or settlement agreement between the Indian lessor and a lessee

resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments are subject to later audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

##### § 1206.451 Definitions.

*Ad valorem lease* means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

*Allowance* means an approved, or an ONRR-initially accepted deduction in determining value for royalty purposes. Coal washing allowance means an allowance for the reasonable, actual costs incurred by the lessee for coal washing, or an approved or ONRR-initially accepted deduction for the costs of washing coal, determined pursuant to this subpart. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant, or an approved ONRR-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

*Area* means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

*Arm's-length contract* means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: Ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which ONRR may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. ONRR may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

*Audit* means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

*BIA* means the Bureau of Indian Affairs of the Department of the Interior. *BLM* means the Bureau of Land Management of the Department of the Interior.

*Coal* means coal of all ranks from lignite through anthracite.

*Coal washing* means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

*Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

*Gross proceeds* (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Indian lessor. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

*Indian allottee* means any Indian for whom land or an interest in land is held in trust by the United States or who

holds title subject to Federal restriction against alienation.

*Indian Tribe* means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for an Indian coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land covered by that authorization, whichever is required by the context.

*Lessee* means any person to whom the Indian Tribe or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

*Like-quality coal* means coal that has similar chemical and physical characteristics.

*Marketable condition* means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

*Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

*Net-back method* means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

*Net output* means the quantity of washed coal that a washing plant produces.

*ONRR* means the Office of Natural Resources Revenue of the Department of the Interior.

*Person* means by individual, firm, corporation, association, partnership, consortium, or joint venture.

*Sales type code* means the contract type or general disposition (e.g., arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract,

or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation or washing allowance.

*Spot market price* means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

#### **§ 1206.452 Coal subject to royalties—general provisions.**

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR group 3400) from an Indian lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) If waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Indian leases shall be allocated to such leases regardless of whether it is stored on Indian lands. The lessee shall maintain accurate records to determine to which individual Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

#### **§ 1206.453 Quality and quantity measurement standards for reporting and paying royalties.**

For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information will be reported on appropriate forms required under 30 CFR part 1210—Forms and Reports.

#### **§ 1206.454 Point of royalty determination.**

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Indian coal in marketable condition measured at the point of royalty



measurement as determined jointly by BLM and ONRR.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. ONRR may ask BLM or BIA to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at § 1206.455(d) of this subpart.

**§ 1206.455 Valuation standards for cents-per-ton leases.**

(a) This section is applicable to coal leases on Indian Tribal and allotted Indian lands (except leases on the Osage Indian Reservation, Osage County, Oklahoma) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 1206.456 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.

**§ 1206.456 Valuation standards for ad valorem leases.**

(a) This section is applicable to coal leases on Indian Tribal and allotted Indian lands (except leases on the Osage Indian Reservation, Osage County, Oklahoma) which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the

value of coal determined pursuant to this section, less applicable coal washing allowances and transportation allowances determined pursuant to §§ 1206.457 through 1206.461 of this subpart, or any allowance authorized by § 1206.464 of this subpart. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (3), and (5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal produced. If the contract does not reflect the total consideration, then ONRR may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be based on less than the gross proceeds accruing to the lessee for the coal production, including the additional consideration.

(3) If ONRR determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the coal production be valued pursuant to paragraphs (c)(2)(ii), (iii), (iv), or (v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.

(5) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to ONRR's satisfaction, were not part of the total consideration paid for the purchase of coal production.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition of produced coal by other than an arm's-length contract), provided that those gross proceeds are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts between buyers and sellers neither of whom is affiliated with the lessee for sales, purchases, or other dispositions of like-quality coal produced in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal;

(ii) Prices reported for that coal to a public utility commission;

(iii) Prices reported for that coal to the Energy Information Administration of the Department of Energy;

(iv) Other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the salability of certain types of coal;

(v) If a reasonable value cannot be determined using paragraphs (c)(2)(i), (ii), (iii), or (iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraph (b)(5) of this section.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require ONRR's prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and ONRR will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) An Indian lessee will make available upon request to the authorized ONRR or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify ONRR if it has determined value pursuant to paragraphs (c)(2)(ii), (iii), (iv), or (v) of this section. The notification shall be by letter to the Director for Office of Natural Resources Revenue or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on the form ONRR-4430 using a valuation method authorized by paragraphs (c)(2)(ii), (iii), (iv), or (v) of this section, and each time there is a change in a method under paragraphs (c)(2)(iv) or (v) of this section.

(e) If ONRR determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by ONRR. The lessee shall also be liable for interest computed pursuant to 30 CFR 1218.202. If the lessee is entitled to a credit, ONRR will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from ONRR. In that event, the lessee shall propose to ONRR a value determination method, and may use that method in determining value for royalty purposes until ONRR issues its decision. The lessee shall submit all available data relevant to its proposal. ONRR shall expeditiously determine the value based upon the lessee's proposal and any additional information ONRR deems necessary. That determination shall remain effective for the period stated therein. After ONRR issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to §§ 1206.457 through 1206.461 and 1206.464 of this subpart.

(h) The lessee is required to place coal in marketable condition at no cost to the Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless ONRR approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by ONRR of value under this section shall be considered final or binding as against the Indian Tribes or allottees until the audit period is formally closed.

(k) Certain information submitted to ONRR to support valuation proposals, including transportation, coal washing, or other allowances pursuant to §§ 1206.457 through 1206.461 and 1206.464 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2. Nothing in this

section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from ONRR or such lessor's lessee directly under the terms of the lease or applicable law.

#### **§ 1206.457 Washing allowances—general.**

(a) For ad valorem leases subject to § 1206.456 of this subpart, ONRR shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 1206.456 of this subpart was based upon like-quality unwashed coal. Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(b) If ONRR determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with § 1218.202 of this chapter, or shall be entitled to a credit, without interest.

(c) Lessees shall not disproportionately allocate washing costs to Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

#### **§ 1206.458 Determination of washing allowances.**

(a) *Arm's-length contracts.* (1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. ONRR's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of form ONRR-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that form ONRR-4292 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then ONRR may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If ONRR determines that the consideration paid pursuant to an arm's-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the washing may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

*(b) Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior ONRR approval of washing allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed form ONRR-4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that form ONRR-4292 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee. ONRR will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may

direct a lessee to modify its actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for washing during the reported period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the wash plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the wash plant services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) ONRR shall allow as a cost an amount equal to the allowable capital investment in the wash plant multiplied

by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent washing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

*(c) Reporting requirements—(1) Arm's-length contracts.* (i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee shall submit page one of the initial form ONRR-4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on form ONRR-4430, Solid Minerals Production and Royalty Report. A form ONRR-4292 received by the end of the month that the form ONRR-4430 is due shall be considered to be received timely.

(ii) The initial form ONRR-4292 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of form ONRR-4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) ONRR may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.

(v) Washing allowances which are based on arm's-length contracts and

which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by ONRR in writing shall qualify as being in effect at the time these regulations become effective.

(vi) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those washing allowances specified in paragraphs (c)(2)(v) and (vii) of this section, the lessee shall submit an initial form ONRR-4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on form ONRR-4430, Solid Minerals Production and Royalty Report. A form ONRR-4292 received by the end of the month that the form ONRR-4430 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial form ONRR-4292 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the washing under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed form ONRR-4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on form ONRR-4292 its estimated costs for the next calendar year. The estimated coal washing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form ONRR-4292 must be received by ONRR within 3 months after the end of the previous reporting period, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new wash plants, the lessee's initial form ONRR-4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates

based upon industry data for similar coal wash plants.

(v) Washing allowances based on non-arm's-length or no contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by ONRR in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by ONRR, the lessee shall submit all data used by the lessee to prepare its forms ONRR-4292. The data shall be provided within a reasonable period of time, as determined by ONRR.

(vii) ONRR may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) ONRR may establish coal washing allowance reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Washing allowances must be reported as a separate line on the form ONRR-4430, unless ONRR approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a washing allowance on its form ONRR-4430 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 1218.202 of this chapter.

(e) *Adjustments.* (1) If the actual coal washing allowance is less than the amount the lessee has taken on form ONRR-4430 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to § 1218.202, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during

the reporting period, the lessee shall be entitled to a credit, without interest.

(2) The lessee must submit a corrected form ONRR-4430 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR.

(f) *Other washing cost determinations.* The provisions of this section shall apply to determine washing costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of washing costs.

**§ 1206.459 Allocation of washed coal.**

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, unless determined otherwise by BLM, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

**§ 1206.460 Transportation allowances—general.**

(a) For ad valorem leases subject to § 1206.456 of this subpart, where the value for royalty purposes has been determined at a point remote from the lease or mine, ONRR shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from an Indian lease to a sales point which is remote from both the lease and mine; or

(2) Transport the coal from an Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point. In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(c)(1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs

between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, ONRR determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with § 1218.202 of this chapter, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Indian leases.

#### **§ 1206.461 Determination of transportation allowances.**

(a) *Arm's-length contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. ONRR's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of form ONRR-4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that form ONRR-4293 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, then ONRR may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If ONRR determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior ONRR approval of transportation allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed form ONRR-4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that form ONRR-4293 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee. ONRR will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or

a cost equal to the depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of ONRR.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without ONRR approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) ONRR shall allow as a cost an amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average as published in Standard and Poor's Bond Guide for the first month of the reporting period of which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) A lessee may apply to ONRR for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (2) of this section. ONRR will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency for Indian leases. ONRR shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, ONRR shall deny the exception request if:

(i) No Federal regulatory agency cost analysis exists and the Federal regulatory agency has declined to investigate pursuant to ONRR timely objections upon filing; and

(ii) The rate significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements—(1) Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee shall submit page one of the initial form ONRR-4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on form ONRR-4430, Solid Minerals Production and Royalty Report.

(ii) The initial form ONRR-4293 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of form ONRR-4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless ONRR approves a longer period (during which period the lessee

shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) ONRR may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.

(v) Transportation allowances that are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by ONRR in writing shall qualify as being in effect at the time these regulations become effective.

(vi) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v) and (vii) of this section, the lessee shall submit an initial form ONRR-4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on form ONRR-4430, Solid Minerals Production and Royalty Report. The initial report may be based on estimated costs.

(ii) The initial form ONRR-4293 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed form ONRR-4293 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on form ONRR-4293 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the allowance. form ONRR-4293 must be received by ONRR within 3 months after the end of the previous reporting period, unless

ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial form ONRR-4293 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract-based transportation allowances that are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by ONRR in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by ONRR, the lessee shall submit all data used to prepare its form ONRR-4293. The data shall be provided within a reasonable period of time, as determined by ONRR.

(vii) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(viii) If the lessee is authorized to use its Federal-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) ONRR may establish reporting dates for individual lessees different than those specified in this paragraph in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on form ONRR-4430, unless ONRR approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its form ONRR-4430 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 1218.202 of this chapter.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on form ONRR-4430 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest, computed pursuant to § 1218.202 of this chapter, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit, without interest.

(2) The lessee must submit a corrected form ONRR-4430 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR.

(f) *Other transportation cost determinations.* The provisions of this

section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

**§ 1206.462 [Reserved]**

**§ 1206.463 In-situ and surface gasification and liquefaction operations.**

If an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to ONRR. ONRR will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until ONRR issues a value determination.

**§ 1206.464 Value enhancement of marketable coal.**

If, prior to use, sale, or other disposition, the lessee enhances the value of coal after the coal has been placed in marketable condition in

accordance with § 1206.456(h) of this subpart, the lessee shall notify ONRR that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of § 1206.456(c)(2)(i) through (iv) of this subpart; or,

(b) In the event that a value cannot be established in accordance with paragraph (a) of this section, then the value of production will be determined in accordance with § 1206.456(c)(2)(v) of this subpart and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by ONRR-approved processing costs and procedures including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under § 1206.458(b)(2)(v) of this subpart.

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